

Master Services Agreement

Between

Nevada Administrative Office of the Courts

and

Contractor

1.	INTRODUCTION	1
1.1	Provision, Performance and Management by Contractor.	1
1.2	Contractor's Experience and Qualifications.	1
1.3	Definitions.	2
1.4	Other Terms.....	2
2.	ORDER OF PRECEDENCE.....	2
3.	TERM	3
3.1	Term.	3
4.	SERVICES	3
4.1	Services.	3
4.2	Termination Assistance Services.....	3
4.3	New Services.....	4
5.	PERFORMANCE STANDARDS.....	4
5.1	Pre-Paid Reimbursements.....	4
5.2	Service Level Reimbursement.	4
6.	CONTRACTOR PERSONNEL	4
6.1	Contractor Personnel Are Not State or AOC Employees.....	4
6.2	Responsibility for Contractor Personnel.....	5
6.3	Qualifications of Contractor Personnel.....	5
6.4	Removal of Contactor Personnel.....	6
6.5	Union Agreements.	6
7.	CONTRACTOR RESPONSIBILITIES	6
7.1	Internal Controls.	6
7.2	Change Control.....	8
7.3	Subcontractors.....	9
7.4	Technology Evolution.....	9
8.	AUDITS	9
9.	FEES.....	11
9.1	General.....	11
9.2	Taxes.....	12
9.3	Proration.	12
10.	INVOICING AND PAYMENT	12
10.1	Invoicing.....	12

10.2	Set Off.....	13
10.3	Disputed Charges.	13
11.	CUSTOMER DATA AND OTHER CONFIDENTIAL INFORMATION	14
11.1	Confidentiality.	14
11.2	Security Incident.	17
11.3	Malicious Code.	18
11.4	Requirements for Information in Legal Proceedings.	19
12.	CONTRACTOR OWNED AND LICENSED MATERIALS	19
12.1	Ownership of Contractor Owned Materials.	19
12.2	License to Contractor Owned Materials.	19
12.3	License to Contractor Third Party Materials.....	20
12.4	Escrow of Deposit Materials.	20
13.	REPRESENTATIONS, WARRANTIES AND COVENANTS.....	22
13.1	Work Standards.	22
13.2	Efficiency and Cost Effectiveness.	22
13.3	Software Currency.	22
13.4	Intellectual Property.	22
13.5	Non-Infringement.	23
13.6	General.	23
13.7	Certifications.	24
13.8	Ethics.....	25
13.9	Compliance with Laws.	27
13.10	Compliance with State Information Security Program Policy	28
13.11	Anti-Kickback Compliance	29
13.12	Equal Opportunity Compliance.	29
13.13	Whistleblower Rights.	30
13.14	Previous Contracts.	30
13.15	Completeness of Due Diligence Activities.....	30
13.16	Financial Condition & Solvency.	30
14.	INSURANCE AND RISK OF LOSS	30
15.	INDEMNITIES	31
15.1	General Indemnity by Contractor.	31
15.2	Intellectual Property Indemnity.....	31

15.3	No Double Recovery.....	32
15.4	Infringement and Mitigation.....	32
15.5	Indemnification Procedures.	33
15.6	Subrogation.	34
16.	LIABILITY	34
16.1	General Intent.	34
16.2	Force Majeure.....	34
16.3	Limitation of Liability.....	35
17.	DISPUTE RESOLUTION.....	36
17.1	Dispute Resolution.....	36
17.2	Jurisdiction.....	37
17.3	Continued Performance.	37
17.4	Governing Law.....	37
18.	TERMINATION.....	38
18.1	Termination for Cause.	38
18.2	Termination Upon Contractor Change of Control.....	39
18.3	AOC Rights Upon Contractor's Bankruptcy.	39
18.4	Termination for Adverse Change in Contractor's Financial Condition.....	40
18.5	Absolute Right.	41
18.6	Non – Appropriation of Funds or Statutory Authority.	41
18.7	Termination of a Customer Contract.....	42
19.	GENERAL	42
19.1	No Waiver of Sovereign Immunity.	42
19.2	RFP Errors and/or Omissions.	42
19.3	Abandonment or Default.	42
19.4	Place of Performance.	42
19.5	Binding Nature and Assignment.	42
19.6	Entire Agreement; Amendment.....	43
19.7	Notices.....	44
19.8	Counterparts.....	45
19.9	Headings.....	45
19.10	Relationship of Parties.....	45
19.11	Severability.	45

19.12	Consents and Approval.....	45
19.13	Acceptance of Deliverables	46
19.14	Waiver of Default; Cumulative Remedies.	46
19.15	Survival.	46
19.16	Publicity.	47
19.17	Service Marks.	47
19.18	Export.	47
19.19	Third Party Beneficiaries.....	47
19.20	Covenant Against Pledging.....	48
19.21	Solicitation and Hiring of Employees.	48
19.22	Further Assurances.....	48
19.23	Liens.	48
19.24	Covenant of Good Faith, Commercially Reasonable Efforts.....	48
19.25	Acknowledgment.	49
20.	EXHIBIT 1 - DEFINITIONS.....	1

TABLE OF EXHIBITS:

<u>Exhibit 1</u>	Definitions
<u>Exhibit 2</u>	State Information Security Program Policy
<u>Exhibit 3</u>	Statement of Work (Forthcoming)
<u>Exhibit 4</u>	Pricing and Financial Provisions (Forthcoming)
<u>Exhibit 5</u>	Service Level Agreement

MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is entered by and between the Nevada Administrative Office of the Courts (“**AOC**”), on behalf of the Supreme Court of the State of Nevada (“**State**”) at 201 S. Carson Street Ste 250, Carson City, NV, 89701 and [] (“**Contractor**”), a [] corporation, with its principal place of business at [], effective as of the full execution of this Agreement by AOC and Contractor (the “**Effective Date**”).

WHEREAS, starting in fiscal year XXXX , funds were appropriated to the AOC for the procurement of XXXX to help courts manage the jury process from beginning to end;

WHEREAS, in accordance with the Laws of the State of Nevada, AOC issued the “Request for Proposal” on the Nevada Supreme Court website www.nvcourts.gov/aoc/procurements “Request for Proposal for Statewide Audiovisual System Solutions ”;

WHEREAS, after evaluation of the RFP responses, AOC determined, and Contractor demonstrated, Contractor is capable of providing and completing the Services in a successful, on-time manner, within budget, and in the manner documented in this Agreement, as further described within the Statement of Work; and

WHEREAS, AOC seeks to procure from Contractor, and Contractor agrees to provide to AOC, under the terms and conditions of this Agreement, the Services described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AOC and Contractor (collectively, the “**Parties**” and each, a “**Party**”) hereby agree as follows:

1. INTRODUCTION

1.1 Provision, Performance and Management by Contractor.

AOC desires that certain Services be provided, performed and managed by Contractor as described in this Agreement. Contractor has carefully reviewed the terms of this Agreement and desires to provide, perform and manage such Services for AOC in accordance with the terms herein.

1.2 Contractor’s Experience and Qualifications.

Contractor warrants that it is an established provider of the Services as awarded under the RFP and has the skills, qualifications, expertise, financial resources and experience necessary to provide the Services described in this Agreement.

1.3 Definitions.

Capitalized terms used in this Agreement shall have the meanings set forth in **Exhibit 1**, unless otherwise defined in the context of the provision. Words having well-known technical or trade meanings but not otherwise defined in this Agreement shall be accorded such meaning unless expressly defined otherwise herein.

1.4 Other Terms.

- (a) **Construction.** The terms defined in this Agreement shall, where appropriate in the context, be deemed to apply to the plural as well as the singular of such terms. Unless otherwise expressly stated, the words “**herein**,” “**hereof**,” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Exhibit, Attachment or other subdivision. Article, Section, Subsection, Exhibit and Attachment references refer to the articles, sections and subsections of, and exhibits and attachments to, this Agreement. The words “**include**” and “**including**” shall not be construed as terms of limitation. Unless otherwise modified, the words “**day**,” “**month**,” and “**year**” mean, respectively, calendar day, calendar month and calendar year. The words “**notice**” and “**notification**” and their derivatives mean notice or notification in writing. All references to this Agreement shall include the Exhibits, Statement of Work, and any other Attachments to this Agreement unless otherwise provided.
- (b) **Requirement of Writing.** To the extent that either Party is required under this Agreement to obtain the other Party’s approval, consent, or agreement, such approval, consent, or agreement shall be in writing and must be signed by, or directly transmitted by electronic mail from, in the case of consent from Contractor, the Project Manager, and in the case of consent from AOC, AOC Contract Manager (or designee), or the AOC Director should such approval, consent, or agreement impact the legal nature of the agreement such as the rights, responsibilities, authority, or contractual position of the parties. or its designee.

2. ORDER OF PRECEDENCE

Unless otherwise expressly stated in the Statement of Work, in the event of a conflict between or among the various documents comprising this Agreement, the following order of precedence shall control:

- (a) **Article 1** through **Article 19** of this Agreement;
- (b) **Exhibit 1** (Definitions);
- (c) **Exhibit 2** (State Information Security Program Policy);

- (d) **Exhibit 3 (Statement of Work)**; **Forthcoming**
- (e) **Exhibit 4 (Pricing and Fee Schedule)** **Forthcoming**; and
- (f) **Exhibit 5 (Service Level Agreement)**.

3. TERM

3.1 Term.

- (a) **Initial Term.** The term of this Agreement shall commence as of 12:00:00 a.m., Pacific Time, on the Effective Date and continue until 11:59:59 p.m., Pacific Time, XXXX, unless this Agreement is terminated earlier as provided herein, in which case the term of this Agreement shall end at 11:59:59 p.m., Pacific Time, on the effective date of such termination (the “**Initial Term**”).
- (b) **Extension.** AOC may, extend the then-applicable term of this Agreement for up to two (2) twenty four-month extension periods (each extension period, a “**Renewal Term**”) on the same terms and conditions of this Agreement. This extension may or may not include every Exhibit.
- (c) **Negotiation.** By giving Contractor notice of such extension, and of the length thereof, at least ninety (90) days before the end of the Initial Term or any then-existing Renewal Term under this **Section 3.1(b)**. The Initial Term and any Renewal Term shall constitute the “**Term.**” At the conclusion of any Renewal Term, either party, if not in material breach of the agreement during the Renewal Term, may seek additional extensions of the term which parties shall negotiate in good-faith at mutually reasonable terms.

4. SERVICES

4.1 Services.

Contractor will provide Services to AOC in accordance with the Statement of Work and perform the Services in accordance with the Service Level Agreement.

4.2 Termination Assistance Services.

Within five (5) Business Days following notice to Contractor from the AOC of termination of Contractor’s services to Customer, and within five (5) Business Days following termination or expiration of such Services, Contractor shall at no additional cost deliver to such Customer and AOC all Customer Data and information used by such Customer in provision of Services. Customer Data and information must be delivered in a format reasonably requested or if no request is made as to format, then Contractor shall provide Customer and AOC each with a hard drive containing Customer Data in a format that is easily readable and understandable, and within industry standard practices.

4.3 New Services.

If a Customer requests that Contractor perform any New Services that are reasonably related to the Services or other services generally provided by Contractor under this Agreement, Contractor and Customer shall enter negotiations and prepare a separate transaction agreement reflecting New Services. Contractor shall notify AOC prior to the start of each such transaction agreement of the any terms, Services, or conditions that may impact the Services or obligations of the Contractor under this Agreement. Any such separate agreement between the Customer and the Contractor will reference this Agreement and any applicable Statement of Work or Service Level. Contractor understands and agrees that no such separate transaction agreement shall alter or modify this Agreement's terms or the parties' obligations hereunder. Nothing herein prevents a Customer and the Contractor to enter into a separate stand-alone transaction agreement that is not governed by this Agreement.

5. PERFORMANCE STANDARDS

5.1 Pre-Paid Reimbursements.

To the extent that AOC remits payment to Contractor for Services to be provided and Contractor does not deliver such Services in accordance with this Agreement or Statement of Work, after written notice and at least 30 days' opportunity thereafter to cure, then except as expressly set forth in the Statement of Work, Contractor shall reimburse AOC for such portion of pre-paid amounts in proportion to the percentage of Services not delivered.

5.2 Service Level Reimbursement.

After Go-Live, Contractor shall perform the Services in accordance with the Service Level Agreement. If Contractor fails to meet any Service Level requirements as set forth in the Service Level Agreement, then notwithstanding any other rights that AOC or Customer may have under this Agreement, Contractor shall pay or reimburse AOC the Service Level Reimbursements and/or any other fees set forth in the Service Level Agreement.

6. CONTRACTOR PERSONNEL

6.1 Contractor Personnel Are Not State or AOC Employees.

Contractor represents that it is an independent contractor as defined in NRS 333.700(2) and NRS 616A and warrants that Contractor and Contractor Personnel will perform all Services and work under this Agreement as independent contractor(s). Contractor warrants that the AOC, the State, any Customer, and the State of Nevada, will not incur any employment liability by reason of this Agreement, or the Services and work to be performed under this Agreement. To the extent that the AOC, the State, any Customer, and the State of Nevada, incurs

any employment liability hereunder; Contractor shall be solely responsible to the AOC, the State, any Customer, and the State of Nevada, for that liability.

6.2 Responsibility for Contractor Personnel.

- (a) Contractor Personnel shall be paid exclusively by Contractor for all Services performed. Contractor is responsible for and must comply with all requirements and obligations related to such employees, agents or Subcontractors under local, State or federal law, including minimum wage, social security, unemployment insurance, State and federal Income Tax and workers' compensation obligations. Contractor is responsible for both federal and State unemployment insurance coverage and standard workers' compensation insurance coverage. Contractor shall comply with all federal and State tax Laws and withholding requirements. The State, AOC, or State of Nevada shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements.
- (b) Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common-law employees.

6.3 Qualifications of Contractor Personnel.

(a) Contractor Personnel Verification.

- (i) Contractor shall be responsible for verifying that all Contractor Personnel (A) are authorized to work in any location in which they are assigned to perform Services, (B) meet the criteria for Contractor Personnel under this Agreement, and (C) have not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest or violent act, and are not otherwise disqualified from performing their assigned Services under applicable Laws, including the Drug Free Workplace Act. Contractor shall maintain, in a reasonably accessible location and format, the documentation reasonably necessary to verify the foregoing, as well as a resume and such other information about the individual as may be reasonably requested by AOC and shall make such documentation available to AOC or AOC auditors upon request.
- (ii) Contractor agrees to utilize and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: (A) all persons employed to perform duties within Nevada during the Term of the Agreement; and (B) all persons, including Subcontractors, assigned by Contractor to perform work pursuant to this Agreement within the United States of America.

- (iii) Contractor shall require its Subcontractors to comply with the requirements of **Section 6.3(a)**. Nothing herein is intended to exclude compliance by Contractor and its Subcontractors with all other applicable federal immigration statutes and regulations promulgated pursuant thereto.

(b) Background and/or Criminal History Investigations.

Prior to the date any Contractor Personnel are assigned to AOC's account, Contractor shall conduct and deliver to AOC (if permitted by law), via a secure electronic method and at Contractor's expense, proof that Contractor Personnel who are involved in Services rendered to AOC have passed a criminal background check.

- (i) All criminal background checks must be conducted in accordance with reasonable AOC standards.

- (ii) All background checks where Criminal Justice Information Services requirements are required hereunder will be done at Contractor's cost.

6.4 Removal of Contactor Personnel.

Contractor shall immediately remove (or cause to be removed) from working with AOC hereunder any Contractor Personnel known to be or reasonably suspected of engaging in activities that may present a threat to the safety or security of any person or any case data, facilities, operations, or assets or upon AOC's request to remove such Contractor Personnel.

6.5 Union Agreements.

Contractor shall provide AOC not less than ninety (90) days' notice of the expiration of any collective bargaining agreement with unionized Contractor Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt or impact the activities or operations of AOC or Contractor's ability to timely perform the Services in accordance with this Agreement.

7. CONTRACTOR RESPONSIBILITIES

7.1 Internal Controls.

- (a) **General.** Contractor warrants it has sufficient Quality Assurance controls in place to perform all of the Services and obligations as required under this Agreement, including such controls as to ensure its proper performance:
 - (i) in accordance with the Disaster Recovery Plan requirements set forth in the Statement of Work, maintain a disaster avoidance procedure designed to safeguard Customer Data and AOC's other

Confidential Information. The force majeure provision shall not limit Contractor's obligation under this subsection;

- (ii) to implement and maintain throughout the Term a written, comprehensive data security program that shall (A) be no less rigorous than those set forth in **Exhibit 2: State Information Security Program Policy**, (B) comply (without limiting the Parties' obligations under **Section 13.10**) with all applicable AOC Standards, including the requirements of AOC's then-current privacy, security and records retention policies, the Internal Revenue Service guidelines contained within IRS Publication 1075 (<http://www.irs.gov/pub/irs-pdf/p1075.pdf>), viewed at least annually. Contractor shall permit AOC or its designee(s) to review such documentation and/or to inspect Contractor's compliance with these provisions in accordance with this **Section 7.1**. All Customer Data shall reside on Systems within the United States of America at all times;
- (iii) utilize a high-availability fail-over system at a data center facility in the United States that is geographically remote from the primary system on which the Services are hosted (the "**Secondary Fail-Over Facility**"). Except for its location and housing facility, the fail-over system shall (A) be, from the Customer's perspective, identical in all respects to the primary system, (B) have hardware and software, network connectivity, power supplies, backup generators, and other similar equipment and services that operate independently of the primary system, (C) have current Customer Data stored on the primary system, and (D) have the ability to provide the Services during the performance of routine and remedial maintenance or any outage or failure of the primary system. Contractor shall operate, monitor and maintain such fail-over system so that it may be activated within two (2) hours or less of any failure of the Services to be available and operable for access and use by its Customers over the Internet;
- (iv) conduct contemporaneous backups of Customer Data and perform or cause to be performed other periodic backups of Customer Data and store such backup of Customer Data at the Secondary Fail-Over Facility. On written notice from AOC, Contractor shall provide AOC with a copy of the backed-up Customer Data in such machine-readable format as AOC requests. No backup of Customer Data shall be counted in allotting or calculating any data storage used or permitted to be used by AOC or any associated payment or fee; and
- (v) in accordance with the AOC's application of the Nevada Department of Administration Office of Information Security policies and the Statement of Work, provide to AOC the descriptions of its Disaster

Recovery Plan. Contractor shall maintain the Disaster Recovery Plan for the Services and implement such Disaster Recovery Plan in the event of any unplanned interruption of the Services. Contractor shall actively test, review, and update the Disaster Recovery Plan at least on an annual basis using industry practices. Contractor must provide AOC with copies of all reports and summaries resulting from any testing of or pursuant to the Disaster Recovery Plan within ten (10) Business Days after Contractor's receipt or preparation thereof. Contractor shall provide AOC with copies of all such updates to the Disaster Recovery Plan within ten (10) Business Days of its adoption. If Contractor fails to reinstate the Services within the period set forth in the Disaster Recovery Plan, AOC may pursue any other remedies available hereunder.

- (b) **Industry Standards, Certifications and Compliance.** Contractor shall comply with industry standards and certifications applicable to the Services, including CJIS.

7.2 Change Control.

- (a) **Prohibition on Unauthorized Changes.** Contractor shall not, without AOC's prior written approval (which may be withheld in AOC's sole discretion, make any change that may (i) increase AOC's total cost of receiving the Services, (ii) require material changes to, or have an adverse impact on, any Customer's operations, facilities, processes, systems, software, utilities, tools, or equipment, (iii) require AOC or any Customer to install, at an additional cost or expense, a new version, release, upgrade of or replacement for any Software or to modify any Software, (iv) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services, (v) have an adverse impact on the cost, either actual or planned, to AOC of terminating this Agreement, in whole or in part, or on AOC's rights to in-source or use third parties, (vi) have an adverse impact on AOC's or any Customer's environment (including its flexibility to deal with future changes, interoperability and its stability), (vii) introduce new technology to (A) AOC's or any Customer's environment or operations or (B) Contractor's environment, to the extent that such introduction has or may have an adverse impact on AOC's or any Customer's environment, (viii) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of the Services, (ix) increase the risk of Contractor not being able to provide the Services in accordance with this Agreement, or (x) violate or be inconsistent with AOC Standards or applicable Laws. If Contractor desires to make such a change, it shall provide to AOC a written risk assessment and mitigation plan.
- (b) **Financial Responsibility for Changes.** Unless otherwise set forth in this Agreement or otherwise expressly approved by AOC in writing, Contractor

shall bear all charges, fees and costs associated with any change desired by Contractor including, (i) the design, installation, implementation, testing and rollout of such change, (ii) any modification or enhancement to, or substitution for, any impacted process or associated Materials, System or Services, and (iii) any increase in the cost to AOC or to Customer of operating, maintaining or supporting any impacted process or associated Materials, System or Services.

7.3 Subcontractors.

Use of Subcontractors. Notwithstanding anything in this Agreement to the contrary, Contractor shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Contractor under this Agreement to the same extent as if such failure to perform or comply was committed by Contractor. Without limiting the foregoing, Contractor warrants and covenants that in no event shall any right or benefit provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, Charges or expense, including taxes) due to the performance of any Services by or through Contractor Technology Evolution.

7.4 Technology Evolution.

At no additional cost to AOC or Customer (so long as commercially reasonable in cost to Contractor and subject to Force Majeure and Section 13.10(g)(ii)), Contractor will cause the Services to evolve with both minor and major releases as necessary to continue to be current with industry practices and at a level of technology that is (i) compliant with all Laws applicable to Contractor in the performance of the Services, (ii) used by Contractors and other top-tier providers in providing services similar to the Services to other customers, and (iii) in general use within the technology industry.

8. AUDITS

- (a) **Single Audit Act Compliance.** Contractor must allow for a single or program-specific audit to be conducted at least once per Contract Year. Contractor must expeditiously provide any assistance reasonably requested by AOC auditors and make reasonably requested personnel, records and information available.
- (b) **Rights to Audit Subcontractors.** Contractor shall use commercially reasonable efforts to obtain audit rights equivalent to those specified in this **Section** from all Subcontractors (and in all events shall obtain such audit rights from all Subcontractors as required under applicable Law) and shall cause such rights to extend to AOC auditors.
- (c) **Contract Records.** Contractor shall maintain complete and accurate records and supporting documentation for all transactions, authorizations,

changes, implementations, accesses, work papers, reports, filings, returns, analyses, procedures, records, data and information created, generated, collected, processed or stored in the performance of its obligations under this Agreement (“**Contract Records**”). Contractor shall maintain such Contract Records in accordance with applicable Laws and the terms of this Agreement. Contractor shall retain Contract Records in a reasonably accessible format during the Term and thereafter for a period of five (5) years after the termination of the Contract, resolution of all billing questions completion of all audits, or until pending litigation has been fully resolved, whichever occurs last (the “**Audit Period**”).

- (d) **Cybersecurity Audits.** At least once per Contract Year, Contractor shall conduct Contractor Site audits of the information technology and information security controls for applicable facilities primarily used for the SaaS Services in complying with its obligations under this Agreement, including obtaining a network-level vulnerability assessment performed by a recognized independent third-party audit firm based on recognized industry practices. For example, if a third-party facility is used, Contractor will make available any third-party audits of such facilities it has access to. Upon request by AOC or Customer, Contractor shall support any cybersecurity audits or penetration testing of the System. Upon AOC’s or Customer’s written request, Contractor shall make available to AOC for review the complete results of Contractor’s most current: Statement on Standards for Attestation Engagements No. 18 audit reports for Reporting on Controls at a Service Organization, Service Organization Controls Type 1, 2, or 3 audit reports, and any reports relating to its ISO/IEC 27001 certification. Contractor shall promptly address any exceptions noted on the SOC reports, or other audit reports, with the development and implementation of a Corrective Action Plan by Contractor.
- (e) **Financial Audits.** During the Audit Period, Contractor shall provide to AOC auditors access at reasonable hours to its personnel, Contract Records, and other pertinent information to conduct financial audits necessary to verify Charges and other Contractor obligations under this Agreement, including the audit work papers of Contractor’s auditor to the extent applicable to the Services and obtainable by Contractor.
- (f) **Access for Audits.** Such access shall be provided for the purpose of performing audits and inspections to (i) verify the accuracy and completeness of Contract Records, (ii) verify the accuracy and completeness of Charges and any out-of-pocket expenses, (iii) examine the financial controls, processes and procedures utilized by Contractor in connection with the Services, (iv) examine Contractor’s performance of its other financial and accounting obligations to AOC under this Agreement, and (v) enable AOC to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services.

- (g) **Findings.** If any such audit reveals an overcharge by Contractor, Contractor shall, either on the following month's invoice or within thirty (30) days of AOC's request, pay to AOC the amount of such determined overcharge.
- (h) **Audits by Governmental Authorities.** Notwithstanding any other provision of this Agreement, the AOC, the State, and any other Nevada agencies may investigate and perform any audits of Contractor as required by applicable Laws. Acceptance of funds under this Agreement constitutes acceptance of the authority of the AOC and state of Nevada to conduct an audit or investigation in connection with those funds.

9. FEES

9.1 General.

- (a) **Payment of Charges.** AOC shall pay Charges to Contractor in accordance with the Fee Schedules set forth in **Exhibit 5: Pricing and Financial Provisions.**
- (b) **No Additional Charges.** Unless expressly set forth in this Agreement or in **Exhibit 5: Pricing and Financial Provisions** as a responsibility of AOC, there shall be no Charges, fees, expenses or other amounts payable to Contractor for the provision of Services. Any costs incurred by Contractor prior to the Effective Date are included in the Charges and are not to be separately paid or reimbursed by AOC.
- (c) **Material Misrepresentation:** The Contractor understands and acknowledges that the representations made in its proposals, both verbally and in writing, are material and significant. The AOC will rely on these representations when evaluating quotations and proposals. Any misrepresentation by the Contractor will be treated as fraudulent concealment of the true facts from the AOC regarding the proposal.
- (d) **Incidental Expenses.** Contractor acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Contractor incurs in performing the Services are included in the Charges as set forth in **Exhibit 5: Pricing and Financial Provisions.** Accordingly, such Contractor expenses shall not be separately paid or reimbursed by AOC.
- (e) **Charges for Contract Changes.** Unless otherwise agreed, changes in the Services shall result in changes in the applicable Charges only if and to the extent (i) this Agreement expressly provides for a change in the Charges in such circumstances, (ii) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances, or (iii) such change meets the definition of New Services and additional Charges are applicable in accordance therewith.

- (f) **Efforts to Minimize.** Throughout the Term, Contractor shall continually seek to identify methods of reducing and minimizing AOC's total cost of receiving the Services and shall notify AOC of such methods and the estimated potential savings associated with each such method.
- (g) **Reproduction and Shipping.** Contractor will provide all Deliverables and Training Materials in electronic format. The AOC may reproduce documentation internally as needed (subject to any confidentiality provisions). If physical copies and shipping are requested by the AOC, the AOC will be invoiced for expenses.

9.2 Taxes.

Pursuant to NRS 372.325, AOC is exempt from the assessment of State taxes. Additionally, AOC is exempt from federal taxes pursuant to 26 U.S.C. §§ 4253(i) and (j). Contractor shall not include any taxes in the Charges. As a result of AOC's exempt status, Contractor shall not charge AOC sales tax on the Services. Contractor is responsible for all taxes, income, sales, use, property, retail, service it may incur under this Agreement. Contractor shall not charge, invoice, or pass on to the AOC or Customer any Contractor taxes so incurred.

9.3 Proration.

Contractor shall compute periodic Charges under this Agreement on a quarterly basis and shall prorate such Charges according to the number of days that AOC has access to Contractor Owned Materials.

10. INVOICING AND PAYMENT

10.1 Invoicing.

- (a) **Invoice for Implementation Services.** Contractor shall invoice AOC for Accepted Deliverables. The invoice shall include (i) AOC's contract number, (ii) the vendor identification number, (iii) the name of the Deliverable, (iv) the pricing set forth in **Exhibit 5: Pricing and Financial Provisions** for the Deliverable and (v) supporting information as AOC may request. Invoices for Implementation Services provided by Subcontractors shall be paid by the Contractor, then invoiced to AOC.
- (b) **Invoice for Production Services.** Following the Commencement Date, Contractor shall invoice AOC for Production Services no sooner than 30 days following the completion of each AOC Fiscal Quarter. Thereafter, Contractor shall present AOC with the invoice for the preceding AOC Fiscal Quarter (the "**Quarterly Invoice**"). Contractor shall not invoice AOC for taxes or any backdated Charges that Contractor failed to invoice to AOC within four (4) invoice cycles following the month in which the Charges were incurred. To the extent that any Charges included in the Quarterly Invoice

are disputed by AOC, such dispute shall be resolved in accordance with **Section 10.3**.

- (c) **Form and Data.** Each invoice provided by Contractor to AOC under this Agreement shall be emailed to AOCaccounting@nvcourts.nv.gov, and shall (i) comply with all applicable legal, regulatory and accounting requirements applicable to Contractor (ii) allow AOC to validate the Charges, and (iii) comply with AOC's accounting and billing requirements, including providing sufficient detail for AOC to allocate costs to all federal and State programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of AOC (if any).
- (d) **Reimbursements.** To the extent a Service Level Reimbursement or other reimbursements or fees may be due to AOC pursuant to this Agreement, AOC shall invoice Contractor with the appropriate amounts then due and owing.

10.2 Set Off.

AOC may set off against any and all amounts to be paid or reimbursed by AOC any amount that Contractor is obligated to pay AOC hereunder, provided that AOC notifies Contractor in writing of the amounts of, and basis for, such set off.

10.3 Disputed Charges.

- (a) **Disputed Amounts.** AOC may withhold any amount of any invoice in dispute except therefrom payment for such Services already performed and accepted by the AOC.
- (b) **Interest.** For invoice amounts that have been paid by AOC that become the subject of a dispute that is resolved in favor of AOC, in addition to any amounts that Contractor may subsequently reimburse to AOC (the applicable amount arising from resolution of such dispute), Contractor shall include interest on the amounts to be reimbursed, accrued monthly at the prime rate of Nevada's largest bank plus 2%, and calculated from the ninetieth (90th) day following the date of resolution of AOC's dispute.
- (c) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right AOC may otherwise have to dispute any Charge or amount or recover any amount previously paid.
- (d) **Prompt Resolution.** In the event AOC initiates a dispute related to an invoice, Contractor shall promptly (but not more than two (2) Business Days from the time AOC initiated such dispute) respond to the issue raised in such dispute, which response shall include a written explanation of the charges that are the subject of such dispute, as well as any supporting documentation necessary to support Contractor's position. If, within ten (10)

days of the date on which AOC notifies Contractor of the dispute, Contractor has either (i) failed to respond to AOC with sufficient details or (ii) failed to provide documentation or other evidence as to the validity of the charges, then such dispute will be deemed resolved in favor of AOC, the appropriate credits against the unpaid invoice will be withheld and the matter closed.

- (e) To the extent any disputed amount relates to a Service Level Reimbursement under the Service Level Agreement (Attachment 2), the calculation of such reimbursement shall be governed by the SLA. For clarity, Service Level Reimbursements are calculated as a percentage of the monthly Charges applicable to the Services subject to the SLA, as outlined in Attachment 2 (Performance Reimbursement). Nothing in this Section shall override the performance credit structure, limits, or reimbursement terms established in the SLA.

11. CUSTOMER DATA AND OTHER CONFIDENTIAL INFORMATION

11.1 Confidentiality.

- (a) **Confidential Information.** Contractor and AOC each acknowledge that the other (and the Customer) possesses information that has commercial, proprietary or other operational value that is not generally available to the public, subject, however to the applicability of any Decision, Order, Rule of the State or other applicable law.
- (b) **Disclosure of Confidential Information.**
 - (i) During the Term and at all times thereafter as specified in **Section 19.14**, each Receiving Party (A) shall hold Confidential Information received from a Disclosing Party in confidence and shall use such Confidential Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes, (B) shall follow all applicable security requirements, protocols, and procedures for accessing and handling such Confidential Information, and (C) shall not disclose, provide, disseminate or otherwise make available any Confidential Information of the Disclosing Party to any third party without the express written permission of the Disclosing Party, unless expressly permitted by **Sections 11.1(b)(ii)** and **11.1(b)(iii)** below or elsewhere in this Agreement. Each Receiving Party shall use at least the same degree of care to prevent disclosure, dissemination, and misuse of the Disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers).

- (ii) The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors, and agents (including AOC auditors in the case of AOC) provided that (A) such person or entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or entity that is no less stringent than that set forth in this **Section 11.1**, and (C) such disclosure is not in violation of Law or applicable AOC Standards. The Receiving Party assumes full responsibility for the acts or omissions of any person or entity to whom it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information.
 - (iii) The Receiving Party may disclose Confidential Information of the Disclosing Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request (but not more than two (2) days from receipt of such request), the Receiving Party, to the extent it may legally do so, gives notice to the Disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that the Disclosing Party may object to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.
 - (iv) Notwithstanding the provisions of this **Section 11.1(b)**, AOC may disclose Confidential Information relating to the financial or operational terms of this Agreement and/or Contractor's performance hereunder (e.g., applicable Service Levels and measurements of Contractor's performance with respect to such Service Levels) in connection with the solicitation of proposals for or the procurement of the same under the authority granted in NRS 239 Nevada's Public Records law. To the extent allowed by applicable Law, AOC shall promptly provide Contractor written notice of any such disclosure.
- (c) **Exclusions.** Notwithstanding the above, **Section 11.1(b)** shall not apply to any particular information which the Receiving Party can demonstrate (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations, (ii) after disclosure to it, is published by the Disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations or through a third party or a party affiliated with the Receiving Party who obtained the information from the Receiving Party, (iii) was lawfully in the

possession of the Receiving Party immediately prior to the time of disclosure to it by Disclosing Party, (iv) is received from a third party that is not restricted from disclosing such information by law, contract, fiduciary duty, or otherwise, or (v) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information.

- (d) **Loss of Confidential Information.** Each Party shall (i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights, and (iv) promptly use appropriate efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this **Section 11.1(d)**.
- (e) **No Implied Rights.** Nothing contained in this **Section 11.1** shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information.
- (f) **Return or Destruction of Confidential Information.** Each Party shall securely store the other Party's Confidential Information until such Confidential Information is securely returned, subject to **Section 4.2**, or permanently destroyed as described in this **Section 11.1(f)**. Except as limited by applicable Laws or this **Section 11.1**, each Party shall destroy all other documentation in any medium that contains, refers to or relates to the other Party's Confidential Information and any copies thereof in such Party's control or possession (or the portion of such Confidential Information specified by the other Party) within fifteen (15) Business Days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder. Upon written request, the Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party. Notwithstanding the foregoing, either Party may retain one copy of the other Party's Confidential Information, other than Customer Data, in its legal department as to the extent required to comply with applicable Laws or enforce its rights under this Agreement. Such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations or the final resolution of any pending dispute, as applicable. Contract Records shall be retained by Contractor for the duration of the Audit Period unless and to the extent Contractor is directed by AOC to

deliver such Contract Records to AOC prior to the expiration of the Audit Period. In no event shall a Party withhold any Confidential Information of the other Party as a means of resolving any dispute.

- (g) **Transfer of AOC Confidential Information.** Contractor shall not transfer AOC Confidential Information to any other locations, nor change the locations for storage and processing of such AOC Confidential Information, except with the express written consent of AOC, which AOC may withhold in its sole discretion.

11.2 Security Incident.

- (a) **Procedures.** In the event Contractor discovers or is notified of a Security Incident, Contractor shall immediately notify AOC of such potential Security Incident. Following such notice, Contractor shall fully cooperate in AOC's handling of such potential Security Incident and, at Contractor's own cost and expense, shall (i) investigate such potential Security Incident, facilitating interviews with Contractor's personnel and others involved in the matter, and making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable Laws, regulations, industry standards or as otherwise reasonably required by AOC, (ii) perform a risk assessment, Root Cause Analysis and Corrective Action Plan, (iii) provide a detailed written report to AOC of such risk assessment, Root Cause Analysis and Corrective Action Plan, (iv) upon AOC's approval, remediate the effects of such Security Incident or potential Security Incident as soon as practicable or assist in the coordination of such remediation if Contractor does not have responsibility for the potential breach, (v) provide AOC with reasonable assurances that such potential Security Incident shall not recur, (vi) cooperate with AOC in providing any notices regarding impermissible disclosures caused by such Security Incident which AOC deems appropriate, and (vii) cooperate in any litigation, investigation, or other action deemed necessary by AOC to protect its rights relating to the use, disclosure, protection and maintenance of Customer Data. Following any Security Incident, Contractor shall continuously use its commercially reasonable efforts to prevent a recurrence of any such Security Incident.
- (b) **Security Incident Involving Personal Data.** To the extent a Security Incident involves Personal Data as defined in NRS 205.4617 and is attributable to a breach by Contractor or Contractor Personnel of Contractor's obligations under this Agreement, Contractor shall bear the costs incurred by Contractor in complying with its legal obligations relating to such Security Incident. In addition to any other damages for which Contractor may be liable under this Agreement, Contractor shall reimburse AOC and Customers for all costs incurred in providing (i) notice to affected individuals, (ii) such affected individuals with credit monitoring services for thirty-six (36) months (where such Security Incident results in the potential for exposure of Highly-Sensitive Personal Information), (iii) such affected

individuals with \$50,000 of identity theft insurance, (iv) call center support for such affected individuals for thirty (30) days, (v) any related governmental fees or fines assessed against AOC, and (vi) any Losses for which Contractor would be liable under **Section 15.1**. The restrictions and Contractor liability limitations of **Section 16** shall not be applicable to any damages incurred by the AOC, State, or the State of Nevada due to Contractor's breach of this Security Incident Involving Personal Data subsection.

- (c) **Third Party Notices.** Contractor agrees that it will not notify any third party of any Security Incident without first obtaining AOC's prior written consent; provided, however, Contractor may, without AOC's prior written consent, notify law enforcement agencies or a third party retained by Contractor for purposes of remediating a Security Incident. Contractor agrees that AOC shall have the right to determine (i) whether notice of the Security Incident is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in AOC's discretion and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
- (d) **Ongoing Obligations.** Contractor agrees to maintain and preserve all documents, records and other data related to any Security Incident for a period that extends until the expiration of the Audit Period.

11.3 Malicious Code.

- (a) **Notification.** At all times during the Term, Contractor shall maintain written plans and procedures designed to prevent the introduction of Malicious Code into AOC's or Customers' environment or any System used to provide the Services, which such measures shall include plans to notify and update AOC and Customers of such introduction and to commercially reasonably mitigate the effects thereof.
- (b) **Remedies.** In the event Malicious Code is discovered, Contractor shall, except as expressly set forth below, at no additional charge to AOC and Customers, use commercially reasonable efforts to eliminate or permanently quarantine such Malicious Code and reduce the effects of such Malicious Code.
- (c) **Recovery Services.** If the Malicious Code causes a loss of operational efficiency or data, Contractor must mitigate such losses and restore such data with generally accepted data restoration techniques ("**Malicious Code Recovery Services**"). Contractor shall provide all Malicious Code Recovery Services at no additional Charge. The Parties anticipate that Malicious Code Recovery Services requested by AOC or Customers shall

be provided by Contractor without adversely affecting Contractor's ability to meet its performance obligations.

11.4 Requirements for Information in Legal Proceedings.

- (a) **Preservation of Legal Privilege.** If AOC notifies Contractor, or Contractor becomes otherwise aware, that particular Confidential Information may be within AOC attorney-client or work-product privileges of AOC, then regardless of any applicable exclusions, Contractor (i) shall not disclose such Confidential Information or take any other action that would result in waiver of such privileges and (ii) shall instruct all Contractor personnel who may have access to such communications to maintain privileged material as strictly confidential and otherwise protect AOC privileges.
- (b) **Cost of Compliance.** Contractor's cost of complying with **Sections 11.3 & 11.4** shall be at no additional charge to AOC.

12. CONTRACTOR OWNED AND LICENSED MATERIALS

12.1 Ownership of Contractor Owned Materials.

As between the Parties, Contractor shall be the sole and exclusive owner of the (i) Materials and other intellectual property lawfully owned by it or its Affiliates prior to the Effective Date, (ii) Materials and other intellectual property acquired by Contractor or its Affiliates on or after the Effective Date other than Materials and other intellectual property obtained by Contractor or its Affiliates from third parties for or on behalf of AOC, and (iii) Materials and other intellectual property that are developed by or on behalf of Contractor pursuant to this Agreement or otherwise paid for by AOC under this Agreement (collectively, "**Contractor Owned Materials**"), including all Intellectual Property Rights in the Contractor Owned Materials. Contractor Data is part of the Contractor Owned Materials.

12.2 License to Contractor Owned Materials.

As of the Effective Date, Contractor hereby grants to AOC and Customers during the Term, at no additional charge (subject to payments as required herein), a world-wide, non-exclusive, irrevocable during the Term (provided that Contractor Owned Materials are used and paid for in accordance with the terms hereof), royalty-free right and license to use, with the right to allow an unlimited number of Authorized Court Users (as defined in the SLA) to use the Services, the Contractor Owned Materials (including all modifications, replacements, upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto), solely to the extent necessary to (i) receive the full benefit of the Services, (ii) perform or have performed services of the nature of the Services, including in-scope processes and services, (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and (iv) perform or have performed ancillary services and functions,

including related information technology services and functions. Contractor Owned Materials shall remain the property of Contractor.

AOC shall not (A) reverse engineer, decompile, or disassemble the source code of all or any portion of the Contractor Owned Materials or (B) use the Contractor Owned Materials for the benefit of any Third Party. To the extent any provision of this Agreement creates an ambiguity or a conflict with any terms or conditions of any agreement or license (by “click-through” or written acceptance) by the Customers, the provisions of this Agreement shall control.

12.3 License to Contractor Third Party Materials.

As of the Effective Date, Contractor hereby grants to AOC and Customers during the Term, at no additional charge (subject to payments as required herein), a world-wide, non-exclusive, irrevocable during the Term (provided that the Third Party Materials are used and paid for in accordance with the terms hereof), royalty-free right and license to use, with the right to grant sublicenses to third parties to use for the benefit of AOC and Customers, the Third Party Materials for which Contractor holds the license or for which Contractor is financially responsible under this Agreement (including all modifications, replacements, upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) for the benefit of AOC and Customers, solely to the extent necessary to (i) receive the full benefit of the Services, (ii) perform or have performed services of the nature of the Services, including in-scope processes and Services, (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. To the extent any provision of this Agreement creates an ambiguity or a conflict with any terms or conditions of any agreement covering Third Party Materials of or provided by Contractor relating to the Services, the provisions of this Agreement shall control.

12.4 Escrow of Deposit Materials.

- (a) **Storage.** Upon receipt of AOC’s payment and for the term of the Agreement, Contractor shall, at mutually agreed sharing of expense, utilize a Mutually-Agreed Escrow Agreement and place an auditable copy of Deposit Materials in escrow with a mutually agreed third-party escrow agent. Parties shall use reasonable efforts to work with the escrow agent to conform the terms herein and the Sample Escrow Agreement attached as **Exhibit 3: Escrow Agreement.**
- (b) **Updates.** For so long as AOC continues to purchase and support services, Contractor shall update this copy of the Deposit Materials with future modifications and enhancements as new versions or significant releases occur, including all existing commentary, explanations, and other

documentation relating to the source code (as well as project and/or solution files used to develop the software).

- (c) **Bankruptcy.** In the event of bankruptcy filing, the AOC shall have the rights of a licensee under Section 365(n) of the U.S. Bankruptcy Code, or any successor legislation.
- (d) **Trigger Event.** A “Trigger Event” occurs (A) if proceedings are commenced for the purpose of liquidating or dissolving Contractor, which proceeding is not dismissed with prejudice within sixty (60) days after filing and (B) If Contractor determines, in its discretion, to expressly designate the Services as “end of life” or “EOL”, and to be no longer sold nor supported at all by or on behalf of Company.
- (e) **Release to AOC.** After Trigger Event occurs, is not objected, and is confirmed, as set forth in more detail in the Escrow Agreement, Contractor agrees that the third-party escrow agent shall release to AOC the Deposit Materials along with a nonexclusive, royalty-free, nontransferable, license for the then remaining term of this Agreement plus seven years. The Deposit Materials may be accessed solely for the purpose of maintaining, enhancing, and providing bug fixes for Contractor’s software which Contractor was otherwise required to do pursuant to the Agreement:
- (f) **Audit.** AOC reserves the right to audit the Deposit Materials held under this Agreement, at its cost, upon written notice to Contractor (subject to strict access controls and confidentiality obligations). If, as a result of such audit, it is determined that Contractor has failed to maintain the Deposit Materials as required by this Agreement, AOC shall notify Contractor in writing of such failure and Contractor shall have 30 days from receipt of such notice to correct any deficiencies and bring Deposit Materials into compliance with this Agreement.
- (g) **Warranties and Obligations.** Should AOC make use of the Deposit Materials as provided herein, all warranties and obligations of Contractor under Software License, or Maintenance and Support Services Agreement with respect to the Software shall be terminated, void, and of no further force or effect.
- (h) **Intellectual Property Rights.** AOC acknowledges and agrees that use of the Deposit Materials as specified herein shall in no way affect Contractor’s intellectual property, confidentiality, and trade secret rights and ownership interests in the Software. AOC shall preserve and protect the same at all times.

13. REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Work Standards.

Contractor represents, warrants and covenants that (i) the Services shall be executed in a professional and workmanlike manner, in accordance with the Service Levels and accepted industry standards, (ii) Contractor shall have the resources, capacity, expertise, and ability in terms of Materials, know-how, and personnel to provide the Services, (iii) Contractor shall provide AOC with training as to new products and services prior to the implementation of such products and services in AOC's environment, and (iv) the Services shall be interoperable with the Software and Systems used by AOC to the extent necessary for AOC to receive the full benefit of the Services.

13.2 Efficiency and Cost Effectiveness.

Contractor represents, warrants and covenants that it shall use commercially reasonable efforts to provide the Services consistent with the required level of quality and performance set forth in the Service Level Agreement.

13.3 Software Currency.

Contractor represents, warrants and covenants that, unless otherwise agreed and to the extent it has operational responsibility under this Agreement, it shall maintain the reasonable currency for Software (including Contractor's and third-party software currency to N or N-1) so that they operate in accordance with the Service Levels and their Specifications.

13.4 Intellectual Property.

- (a) **Ownership and Use.** Contractor represents, warrants and covenants that it either owns or has all necessary rights to use any and all Materials, Software, Systems, equipment, and other resources used in performance of its Services hereunder.
- (b) **Performance.** Contractor represents, warrants and covenants that any Contractor Owned Materials (consisting of Software) shall comply with all applicable documentation and Specifications. Contractor shall provide the functions and features and operate in the manner described therein during the Warranty Period.
- (c) **Nonconformity of Contractor Owned Software.** If the Contractor Owned Materials (consisting of Software) do not comply with their applicable documentation and Specifications and/or materially adversely affect the Services provided hereunder, subject to any force majeure provisions and/or excluding any errors due to misuse or fault of AOC related parties,

Contractor shall, at its sole cost and expense and without any charge to AOC, expeditiously repair such Software, or replace such Software with conforming Software.

13.5 Non-Infringement.

Except as otherwise provided in this Agreement, Contractor represents, warrants and covenants that it shall perform its obligations and responsibilities under this Agreement in a manner that does not constitute an infringement or misappropriation of any Intellectual Property Rights; provided, however, that the Contractor shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by AOC without the approval of the Contractor, (ii) the failure of AOC to use corrections or modifications provided by the Contractor offering equivalent features and functionality (provided Contractor notifies AOC that the corrections or modifications provided address the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), (iii) adherence to detailed specifications provided by AOC that Contractor is required to comply with (provided Contractor notifies AOC of the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), or (iv) Third Party Materials, except to the extent that such infringement or misappropriation arises from the failure of Contractor to obtain the necessary licenses or required third party consents or to abide by the limitations of the applicable Third Party Materials licenses.

13.6 General.

(a) **Contractor.** Contractor represents, warrants and covenants to AOC that:

- (i) Contractor is a business entity duly formed, validly existing and in good standing under the Laws of its state of formation;
- (ii) Contractor has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (iii) Contractor has obtained all licenses, authorizations, approvals, consents or permits required to perform its obligations under this Agreement under all applicable federal, state, or local Laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services;
- (iv) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of Contractor;
- (v) The individual executing this Agreement and the documents made part of this Agreement is authorized to sign such documents on

behalf of the Contractor and to bind the Contractor to any contract that may result from this Agreement;

- (vi) The execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which Contractor or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
 - (vii) As of the Effective Date there is no pending claim, suit or proceeding or, to the best of Contractor's knowledge, any threatened claim, suit or proceeding, against or affecting Contractor or any of its Affiliates or, to the best of Contractor's knowledge, its material Subcontractors that could reasonably be expected to adversely affect Contractor's ability to perform and fulfill its obligations under this Agreement. Contractor shall notify AOC within ten (10) Business Days of Contractor's knowledge of any such claim, suit or proceeding. Without limiting the terms of **Section 11.1(b)(iii)**, Contractor shall notify AOC, within two (2) Business Days, if such process is served on Contractor in connection with this Agreement where such matter may reasonably materially adversely affect the Services or a Party's rights, including any subpoena for Contractor's records related hereto, and shall send a written notice of the service together with a copy of the same to AOC within five (5) Business Days of such service.
- (b) **AOC.** AOC represents, warrants and covenants to Contractor that:
- (i) AOC has statutory authority to enter into this Agreement and to perform its obligations hereunder;
 - (ii) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
 - (iii) When executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of AOC enforceable in accordance with its terms.

13.7 Certifications.

Contractor, for itself and, to the best of its knowledge, on behalf of its material Subcontractors, certifies that:

- (a) It is not, and its principals are not, suspended or debarred from doing business with the State of Nevada, or the federal government as listed in the System for Award Management (SAM).
- (b) As of the Effective Date, it is not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (c) It agrees that any payments due under this Agreement shall be applied towards any debt or delinquency that is owed to the State of Nevada;
- (d) It does not have any knowledge that any Contractor Personnel or any employee of a Subcontractor performing Services under this Agreement is, or is a relative of, any current or former State of Nevada employee, within three (3) degrees of consanguinity;
- (e) It shall not enter into any agreement or act in any manner that may have the effect of restricting sales to the U.S. Government.
- (f) AOC's payment to Contractor under this Agreement shall not be used for the purposes of lobbying any elected or appointed government official.
- (g) It shall comply with the requirements of IIRIRA, and the Immigration Act of 1990 (8 U.S.C. § 1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of IIRIRA, who shall perform any labor or services under this Agreement. Nothing herein is intended to exclude compliance by Contractor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto; and
- (h) It is compliant with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

During the Term, Contractor shall, for itself and its Subcontractors, promptly disclose to AOC all changes that occur to the foregoing certifications, representations and warranties. If these facts change during the Term, any failure by Contractor to disclose to AOC shall give rise to a right to terminate this Agreement, in whole or in part, immediately for cause or exercise any other remedy under Applicable Law;

13.8 Ethics.

In addition to these provisions applying to Contractor, Contractor shall use commercially reasonable efforts to impose the provisions of this **Section 13.8** (or substantially similar provisions) in each of its subcontracts. Each such

representation, warranty and covenant shall be fully applicable with respect to Contractor and each Subcontractor:

- (a) **Reliance.** In executing this Agreement, AOC relies on Contractor's representations, warranties and covenants regarding the following: (i) Contractor regularly provides the types of Services described in the RFP to other public or private entities, (ii) Contractor has the skills and resources necessary to perform the Services within industry standard quality and responsiveness, (iii) Contractor has thoroughly reviewed, analyzed, and understood the RFP, (iv) Contractor has timely raised all questions and objections, (v) Contractor has had the opportunity to review and understand the State's stated objectives in entering into this Agreement and, based on such review and understanding, Contractor has the ability and capacity to perform the Services for the Term in accordance with the terms and conditions of this Agreement, (vi) Contractor also has reviewed and accepted the risks associated with this Agreement, including the risk of non-appropriation of funds, (vii) Contractor shall at all times be capable of, and legally authorized to, provide the Services, and (viii) the Charges assessed to AOC shall be true and correct.
- (b) **Inducements.** Contractor represents, warrants and covenants that Contractor nor any of its Affiliates has received, given or will give commissions, payments, kickbacks, lavish or extensive entertainment or other inducements of more than minimal value to any employee or agent of AOC in connection with this Agreement. Contractor also represents, warrants and covenants that, to the best of its knowledge, neither Contractor nor any of its Affiliates has given any such payments, gifts, entertainment or other thing of value to any employee or agent of AOC. Contractor also acknowledges that the giving of any such payment, gift, entertainment or other thing of value is strictly in violation of AOC policy on conflicts of interest, which would result in the cancellation of this Agreement and other existing and future contracts between the Parties.
- (c) **No Payment Tied to Award.** Contractor represents, warrants and covenants that Contractor nor any of its Affiliates has paid or agreed to pay any person or entity, other than bona fide employees working solely for Contractor or such Affiliates, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award of this Agreement.
- (d) **No Interest.** Contractor represents, warrants and covenants that Contractor nor any of its Affiliates has acquired or will directly or indirectly acquire any contractual, financial, business or other interest or advantage that would conflict with Contractor's performance of its duties and responsibilities to AOC or otherwise create an appearance of impropriety with respect to this Agreement; and Contractor shall promptly (but not more than two (2) days from the time in which Contractor first becomes aware of any such interest)

inform AOC of any such interest that may be incompatible with the interests of AOC.

- (e) **No Abuse of Authority.** Contractor represents, warrants and covenants that Contractor nor any of its Affiliates has violated the antitrust laws of the United States or any provision of NRS Chapters 104, 597, 598 and 598A. Contractor nor any of its Affiliates has used or shall use the information provided under this Agreement to improperly obtain financial gain or influence.
- (f) **No Collusion.** Contractor represents, warrants and covenants that the prices presented in the Response were arrived at independently, without consultation, communication, or agreement with any other proposer for the purpose of restricting competition, the prices quoted were not knowingly disclosed by Contractor to any other proposer and no attempt was made by Contractor to induce any other person or entity to submit or not to submit a proposal for the purpose of restricting competition.
- (g) **AOC Code of Ethics.** Contractor represents, warrants and covenants that, in the performance of the Services, it shall comply with all applicable provisions of the Supreme Court Model Code of Conduct and the Nevada Code of Judicial Conduct.

13.9 Compliance with Laws.

- (a) **Compliance by Contractor.** Contractor represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of Contractor's other legal and contractual obligations hereunder, Contractor and the Services are in compliance with all applicable Laws and shall remain in compliance during the Term. If Contractor becomes aware that it is out of compliance with such applicable Laws, Contractor shall, at its sole cost, promptly (but not more than thirty (30) days from the time in which Contractor first becomes aware of such non-compliance) comply with such applicable Laws.
- (b) **Compliance Data and Reports.** At no additional charge, Contractor shall provide AOC with data and reports reasonably necessary for AOC to comply with all Laws applicable to the use of the Services.
- (c) **Materials and Systems Compliance.** Contractor represents, warrants and covenants that the Materials and Systems used in connection with providing the Services are in compliance with all applicable Laws and shall remain in compliance with such Laws during the Term.
- (d) **Customer Data.** Contractor represents, warrants and covenants that any collection, receipt, access, use, storage, disposal and disclosure of any Customer Data by Contractor shall comply with all applicable Laws,

including federal and state Privacy Laws, as well as all other applicable regulations and directives.

- (e) **Notice of Laws.** Each party shall notify the other Party of any Laws and changes in Laws applicable to the Services that would reasonably be expected to affect Contractor's obligations under this Agreement or AOC's use of the Services.
- (f) **Implementation of Changes in Laws.** Upon a change in applicable Laws affecting use of the Services, the parties shall mutually discuss in good faith amending this Agreement to incorporate any modifications necessary for AOC's compliance. Without modifying the Parties' respective financial obligations, Contractor shall bear the costs associated with compliance with changes in Laws unless the change(s) required for compliance meets the definition of New Services, except as otherwise set forth herein or mutually agreed, in which case it shall be treated as such and subject to payment of fees for such New Services.
- (g) **Termination.** (i) In the event that any change(s) in Laws results in an increase of ten percent (10%) or more in the estimated average quarterly charges, then AOC may, within one hundred eighty (180) days of such aggregate increase being attained and upon at least ninety (90) days prior notice to Contractor, terminate this Agreement in its entirety or the impacted Services as of the termination date specified in the notice. (ii) In the event that any change(s) in Laws results in an increase of ten percent (10%) or more in the estimated average quarterly costs and expenses to Contractor, then Contractor may, within one hundred eighty (180) days of such aggregate increase being attained and upon at least ninety (90) days prior notice to AOC, terminate this Agreement in its entirety or the impacted Services as of the termination date specified in the notice.
- (h) **Responsibility.** Contractor shall be responsible for any Losses imposed on Contractor or AOC to the extent resulting from any failure of Contractor or any third party engaged by Contractor to comply with applicable Laws or respond in a timely manner to changes in such Laws.

13.10 Compliance with State Information Security Program Policy

- (a) Contractor shall use and maintain appropriate safeguards to prevent the unauthorized access to and use of AOC and Customer data.
- (b) Contractor shall implement administrative, physical and technical safeguards to protect the AOC and Customers' information technology systems, and the data that those systems process, store, and transmit electronically.
- (c) Contractor agrees that such safeguards shall be no less than those practices, technology requirements, and guidance found in **Exhibit 2: State**

Information Security Program Policy, as applicable to the Services. Such safeguards include:

- (i) Network and application security and vulnerability management;
- (ii) Logical access controls;
- (iii) Secure media storage and disposal controls;
- (iv) Personnel controls; and
- (v) Physical security and environmental controls.

13.11 Anti-Kickback Compliance

- (a) Contractor shall have in place and follow procedures designed to prevent and detect Kickbacks. Contractor shall promptly report in writing, within 48 hours, all possible Kickback violations to AOC Chief Financial Officer & AOC Audit Manager. Contractor shall cooperate fully with AOC and any agency investigating a possible violation.
- (b) AOC may offset the amount of the Kickback against any monies owed under the Agreement and direct Contractor to withhold the amount of the Kickback. AOC may order that withheld monies be paid over to the Government.

13.12 Equal Opportunity Compliance.

Contractor represents, warrants and covenants that it shall abide by all applicable Laws pertaining to equal employment opportunity, including state and federal Laws. In accordance with such Laws, Contractor agrees that no individual in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, or disability, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed by Contractor under this Agreement. If Contractor is found to be in non-compliance with these requirements, Contractor agrees to take appropriate steps to correct such noncompliance. Upon request, Contractor shall use commercially reasonable efforts to furnish to AOC information regarding Contractor's nondiscriminatory hiring and promotion policies (if any such formal specific policies exist, other than mere policy to comply with all applicable laws), as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

13.13 Whistleblower Rights.

Contractor will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established under Federal Acquisition Regulation (FAR) 3.908. Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712. Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse.

13.14 Previous Contracts.

Other than as specifically disclosed by Contractor in writing, Contractor represents, warrants, and covenants that to the best of its knowledge, neither it nor any of its Affiliate, has been a party to any contract with AOC or any other State-related entity that was terminated within the previous five (5) years for breach or failure to perform. Contractor hereby certifies that it has provided disclosure of all known pending, resolved, or completed litigation, mediation, arbitration or other alternate dispute resolution procedure involving Contractor, its Affiliates or its Subcontractors that could reasonably be expected to materially adversely affect Contractor's ability to perform and fulfill its obligations under this Agreement.

13.15 Completeness of Due Diligence Activities.

Contractor acknowledges that it has been provided with sufficient access to AOC and Customer. Personnel has had sufficient time to conduct and perform a thorough due diligence of AOC's operations, business requirements and assets. Accordingly, Contractor shall not seek any adjustment in the Charges based on any incorrect assumptions made by Contractor in arriving at the Charges.

13.16 Financial Condition & Solvency.

Upon request by AOC, Contractor shall furnish evidence to the AOC (or evidence independently reviewed and confirmed to AOC by a third party) which is objectively sufficient to confirm Contractor's continuing financial condition and solvency.

14. INSURANCE AND RISK OF LOSS

Contractor shall obtain and maintain for the duration of this agreement applicable insurance policies as specified by AOC. Unless otherwise approved or specified by AOC, CONTRACTOR must maintain in force and provide proof of: (1) a commercial general liability policy with a per occurrence limit of at least \$1,000,000; (2) a professional liability insurance policy with a per occurrence limit of at least \$1,000,000, if applicable to the nature of the agreement; (3) if applicable, an automobile liability policy with a combined single limit of not less

than \$1,000,000, if applicable to the nature of the agreement and (4) Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the Contractor's duties and obligations as undertaken by Contractor in this agreement and shall include, but not be limited to infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Upon request, Contractor shall add the AOC, the Nevada Supreme Court, its officers and employees as an additional insured to any insurance policy required under this agreement. Contractor's insurance coverage (including any insurance not specifically referenced in this agreement) shall be primary insurance and non-contributory with respect to all other available sources. Contractor shall also maintain worker's compensation/industrial insurance as required by law and provide proof coverage to AOC. Contractor shall immediately notify AOC of any change, lapse or cancellation of any insurance coverage. Contractor shall provide AOC with written notice at least 10 days before any change in any insurance policy that is required under this agreement.

15. INDEMNITIES

15.1 General Indemnity by Contractor.

Contractor agrees to indemnify, defend and hold harmless the state, aoc, customer and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees (collectively, "aoc indemnitees") from and against any and all third party claims, actions, liabilities, demands, or suits, and all related costs, attorneys' fees, and expenses arising out of, or resulting from any acts or omissions of contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of this agreement in material breach of this agreement, and/or any statement of work or purchase orders issued under this agreement. Contractor and aoc agree to furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense, including attorney's fees. In addition, contractor will reimburse aoc, customer and the state of Nevada for any claims, damages, costs, expenses or other amounts, including, but not limited to attorney's fees and court costs, arising from any such claim. If aoc determines that a conflict exists between its and customer's interests and those of contractor or if aoc or customer is required by law to select separate counsel, aoc and customer will each be permitted to select separate counsel and contractor will pay all reasonable costs of AOC's and customer's counsel.

15.2 Intellectual Property Indemnity.

Contractor shall defend, indemnify and hold harmless aoc, state, customer and the state of Nevada from and against any and all claims, violations, misappropriations or infringement of any intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of contractor pursuant to this agreement; (2) any deliverable work product, configured service or other service as provided hereunder, if properly used as permitted; and/or (3) AOC's and/or contractor's use of or acquisition of any requested services or other items provided to aoc by contractor, in each case, if properly used for its intended purposes, to which aoc has access as a result of contractor's performance under this agreement. Contractor and aoc agree to furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense, including attorney's fees. In addition, contractor will reimburse aoc, state, customer and the state of Nevada for any claims, damages, costs, expenses or other amounts, including, but not limited to attorney's fees and court costs, arising from any such claim. If aoc determines that a conflict exists between its interests and those of contractor or if aoc or customer is required by law to select separate counsel, aoc and customer will be permitted to each select separate counsel and contractor will pay all reasonable costs of AOC's and customer's counsel.

15.3 No Double Recovery.

No provision of this Agreement shall be construed to provide indemnity for any amounts for which AOC has been fully compensated under any other agreement or action at law or equity; provided, however, that AOC shall not be required to exhaust any or all remedies available under other agreements or at law or equity before recovering indemnification amounts pursuant to **Section 15.1**.

15.4 Infringement and Mitigation.

In the event that (i) Contractor receives or otherwise learns of any threat, warning, or notice alleging that all, or any component or feature of the Services violates an Intellectual Property Right, or (ii) AOC's continued use of Work Product, Contractor Owned Material, or Services is enjoined; then, in each case, Contractor shall, in addition to defending, indemnifying and holding harmless AOC as provided in **Section 15.2** and to the other rights AOC may have under this Agreement, promptly and at its own option, cost and expense and in such a manner as to minimize the disturbance to AOC's operations and activities, do one of the following:

- (a) **Obtain Rights.** Obtain for AOC the right to continue using and receiving the benefits of such Work Product, Contractor Owned Material, or Services.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing or enjoined (provided that such modification does not degrade the performance or quality of the Services or adversely affect AOC's intended use as contemplated by this Agreement).

- (c) **Replacement.** Replace such item(s) with a non-infringing or non-enjoined, as applicable, functional and qualitative equivalent acceptable to AOC.
- (d) **Discontinued Use.** If, despite Contractor's commercially reasonable efforts to effect the alternatives set forth in **Sections 15.4(a), (b), and (c)** above, the Parties determine that none of such alternatives are feasible, Contractor may discontinue its use of such potentially infringing or enjoined Work Product, Contractor Owned Material, or Services. Neither such right nor such discontinuation shall limit or expand AOC's rights or Contractor's obligations under this Agreement nor shall such right or discontinuation excuse any breach by Contractor of its obligation to provide the Services in a non-infringing and non-enjoined manner.

15.5 Indemnification Procedures.

With respect to claims which are subject to indemnification under this Agreement, the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any person or entity entitled to indemnification under this Agreement of notice of the threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim in respect of which the AOC Indemnitee may seek indemnification hereunder, the AOC Indemnitee shall notify Contractor of such claim. No delay or failure to so notify Contractor shall relieve Contractor of its obligations under this Agreement except to the extent that Contractor has suffered actual prejudice by such delay or failure. Within fifteen (15) Business Days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) Business Days before the date on which any response to a complaint or summons is due, Contractor may notify the indemnitee that Contractor elects to assume control of the defense and investigation, not excluding the State's or AOC's right to fully participate in all proceedings at all resolution or legal stages including the approval of any settlement or offer of judgment of that claim (a "**Notice of Election**").
- (b) **Procedure Following Notice of Election.** If Contractor delivers a Notice of Election within the required notice period, Contractor shall immediately take control of the defense and investigation of such claim and shall employ counsel reasonably acceptable to AOC to handle and defend the same, at Contractor's sole cost and expense, not excluding the State's or AOC's right to fully participate in all proceedings, at all resolution or legal stages including the approval of any settlement or offer of judgment.
- (c) **Procedure Where No Notice of Election Is Delivered.** If Contractor does not deliver a Notice of Election relating to any claim within the required notice period, the AOC Indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. Contractor shall promptly

reimburse the AOC Indemnitee for all such costs and expenses incurred by the AOC Indemnitee, including attorneys' fees.

15.6 Subrogation.

In the event that Contractor shall be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, Contractor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

16. LIABILITY

16.1 General Intent.

Subject to the specific provisions and limitations of this **Article 16**, and to the extent allowed by applicable Laws, it is the intent of the Parties that each Party shall be liable to the other Party for any actual and direct damages incurred as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

16.2 Force Majeure.

- (a) **General.** Subject to **Section 16.2(c)**, no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by causes outside such party's control, including without limitation, to the extent caused by the other party or its agents, or caused by natural causes or fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemics, pandemics, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of prudent planning, alternate sources, incident response plans, workaround plans or other means ("**Force Majeure Event**"). A strike, lockout or labor dispute involving Contractor Personnel shall not excuse Contractor from its obligations hereunder. Notwithstanding anything to the contrary in this **Section 16.2**, Contractor shall remain obligated to perform its obligations contained in **Section 7.1(a)**.
- (b) **Substitute Services; Termination.** If any Force Majeure Event has substantially prevented, hindered or delayed or is reasonably expected to substantially prevent, hinder or delay the performance by Contractor of Services necessary for the performance of critical AOC functions for longer than the recovery period specified in the applicable Disaster Recovery Plan or, if there is no such specified recovery period, twenty-four (24) hours, Contractor shall, unless and until otherwise directed by AOC, use commercially reasonable efforts to procure such Services from an alternate source at Contractor's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Contractor for the Services with

respect to the period of non-performance. In addition, if any Force Majeure Event substantially prevents, hinders or delays the performance by Contractor of Services necessary for the performance of critical AOC functions for more than thirty (30) days, and not caused by AOC, then AOC may, upon notice to Contractor, terminate this Agreement in its entirety or any portion of the Services so affected (including portions that are no longer required if the impacted portion is terminated) as of the termination date specified in the notice.

- (c) **Disaster Recovery.** Upon the occurrence of a Force Majeure Event that prohibits the ability of AOC to provide critical business functions for some predetermined period of time, or any other event that is designated as a “Disaster” under the applicable Disaster Recovery Plan, Contractor shall promptly implement, as appropriate, the applicable business continuity and Disaster Recovery Plan and provide business continuity and Disaster Recovery Services, as described in the Disaster Recovery Plan.
- (d) **Payment Obligation.** If Contractor fails to provide Services in accordance with this Agreement due to the occurrence of a Force Majeure Event, all amounts payable to Contractor hereunder shall be equitably adjusted downward so that AOC is not required to pay any amounts for Services that AOC is not receiving, whether from Contractor or from an alternate source at Contractor’s expense pursuant to **Section 16.2(b)**. Contractor shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Contractor’s ability to perform.

16.3 Limitation of Liability.

- (a) **Exclusions from Limitations.** Except as provided in this **Section 16.3**, neither party shall be liable to the other party for indirect, consequential, special, incidental, collateral, exemplary or punitive damages, including lost profits, regardless of the form of the action or the theory of recovery, even if such party has been advised of the possibility of such damages.
- (b) **Liability Cap.** The total aggregate liability of the State, AOC, or the State of Nevada, for all claims asserted by Contractor, under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall not exceed the greater of (i) Charges paid and payable by AOC to Contractor during the twenty-four (24) months preceding the date upon which the cause of action accrues hereunder, or (ii) US \$200,000. The total aggregate liability of the Contractor, for all claims asserted by AOC shall not exceed the greater of (i) amounts collected under Contractor’s insurance, or (ii) US \$200,000.
- (c) **Acknowledged Direct Damages.** For the avoidance of doubt, the following shall be considered direct damages and neither Party shall assert that the

following are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result directly from the breaching Party's failure to perform in accordance with this Agreement:

- (i) Costs and expenses of restoring, reloading, or notifying of any lost, stolen or damaged Customer Data.
- (ii) Costs and expenses of implementing a work around in respect of a failure to provide the Services or any part thereof.
- (iii) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source in excess of the Charges that would have been paid Contractor for such Services.
- (iv) Fines, penalties, sanctions, interest or other monetary remedies incurred as a result of a failure to comply with applicable Laws.
- (v) Service Level Reimbursements assessed against Contractor.
- (vi) Lost discounts, late fees and/or interest charges incurred by AOC resulting from Contractor's breach of its obligations.

The absence of direct damages listed in this **Section 16.3(c)** shall not be construed or interpreted as an agreement to exclude it as a direct damage under this Agreement.

17. DISPUTE RESOLUTION

17.1 Dispute Resolution.

Subject to compliance with NRS 38 Nevada's Uniform Arbitration Act of 2000 prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 17.1(b)**, the Parties shall first attempt to resolve such dispute informally, and in accordance with the Statement of Work.

- (a) **Prerequisite to Formal Proceedings.** In the event that a Party determines that amicable resolution through continued negotiations of a dispute does not appear likely, such Party shall be entitled to discontinue negotiations and resolve the dispute through the dispute resolution process provided for in NRS 38. The parties hereby agree to binding arbitration.
- (b) **Equitable Remedies.** Notwithstanding the provisions and escalation time periods specified in this Agreement (including the Statement of Work), either Party may at any time discontinue negotiations and resolve the dispute through the dispute resolution process provided for in NRS 38 in order to (i) avoid the expiration of any applicable limitations period, (ii) preserve a superior position with respect to other creditors, (iii) address a

claim arising out of the breach of a Party's obligations (iv) pursue claims for injunctive relief with respect to a Party's obligations to the extent resulting in irreparable injury.

17.2 Jurisdiction.

Except as otherwise expressly provided in this **Article 17** or unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to AOC, each Party irrevocably agrees that any legal action, suit or proceeding brought by such Party arising out of this Agreement must be brought solely and exclusively in the First Judicial District Court of Nevada, in Carson City and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts, *in personam*, generally and unconditionally; provided, however, that this **Section 17.2** shall not prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in the state courts of the State of Nevada from seeking to remove such legal action, suit or proceeding, pursuant to applicable federal Law, to the United States District Court for the District of Nevada, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court.

17.3 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate this Agreement as expressly provided herein. For purposes of clarification, Customer Data may not be withheld by Contractor pending the resolution of any dispute.
- (b) **Non-Interruption of Services.** Contractor acknowledges and agrees that any interruption to the Services may cause irreparable harm to AOC and Customer and may adversely impact the ability of the State and the State of Nevada to carry out vital public safety and other governmental functions, in which case an adequate remedy at Law would not be available. Contractor expressly acknowledges and agrees that at all times, including pending resolution of any dispute or controversy, it shall continue to perform under this Agreement and not directly or indirectly engage in any act or omission that may have a detrimental effect on provision of the Services to AOC under this Agreement.

17.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the Laws of the State of Nevada, without regard to the conflicts of law provisions.

18. TERMINATION

18.1 Termination for Cause.

- (a) **By AOC.** AOC may, upon written notice to Contractor, terminate this Agreement or any incorporated Exhibit, in whole or in part, effective upon the termination date set forth in such termination notice, if Contractor:
- (i) commits a material breach of its obligations with respect to Services under the Statement of Work(s) and such breach is not cured, or is not capable of being cured, within the applicable timeframe for cure provided for herein or if not provided, within 30 days after receipt of written notice of such breach from AOC;
 - (ii) signs this Agreement with a false statement or commits a material breach of any provision of this Agreement, including the violation of any of the representations, warranties, guarantees, certifications, affirmations, or covenants contained herein;
 - (iii) commits a number of breaches of its duties or obligations which collectively constitute a material breach of this Agreement and Contractor fails to cure each such breach within thirty (30) days of initial notice thereof; provided, however, that this **Section 18.1(a)(iii)** shall in no manner limit (A) AOC's right of termination pursuant to any other provision of **Section 18.1(a)**, or (B) Contractor's obligation to cure individual nonmaterial breaches of this Agreement;
 - (iv) commits a material breach of **Section 13.8** of this Agreement;
 - (v) (1) files for bankruptcy, (2) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, or insolvency, (3) passes a resolution for its voluntary liquidation, (4) has a receiver or manager appointed over all or substantially all of its assets, (5) makes an assignment for the benefit of its creditors, or (6) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations;
 - (vi) breaches its obligations under this Agreement with respect to Customer Data or AOC Confidential Information;
 - (vii) fails to communicate with AOC as required by this Agreement; or
 - (viii) its representative offered or gave a gratuity to any individual affiliates with the AOC to obtain favorable treatment under this agreement..

- (b) **By Contractor.** In the event that AOC is in material breach of this Agreement (including without limitation any failure to pay Contractor amounts due and owing by the specified due date) and fails to cure such default within thirty (30) days of notice from Contractor of its intention to terminate for such breach or failure to make such payment, Contractor may, upon further notice to AOC specifying Contractor's intention to terminate this Agreement in accordance with this provision following an additional thirty (30) days, terminate this Agreement in its entirety as of the termination date specified in the further notice (provided that AOC has not cured the default prior to the effective date of termination). Contractor acknowledges and agrees that, unless otherwise expressly set forth in this Agreement (including any subsequent SOW), this **Section 18.1(b)** describes Contractor's sole right to terminate this Agreement and Contractor hereby waives any other rights it may have to terminate this Agreement.

18.2 Termination Upon Contractor Change of Control.

In the event there is a change in control of Contractor (or that portion of Contractor providing all or any portion of the Services under this Agreement), or Contractor (or that portion of Contractor providing all or any portion of the Services under this Agreement) is merged with or into another entity, then Contractor shall immediately provide AOC with written notice of such change in control. At any time within twelve (12) months following receipt of such written notice, AOC may terminate this Agreement, in whole or in part, upon at least ten (10) Business Days' prior notice to Contractor, effective as of the termination date specified in such notice. As used in this Agreement, "change in control" means (a) a sale of substantially all of the assets of Contractor, (b) a change in a majority of the management team, such as the board of directors, or (c) a direct or indirect change in beneficial ownership of 50% or more of the equity interest in Contractor.

18.3 AOC Rights Upon Contractor's Bankruptcy.

- (a) **General Rights.** In the event of Contractor's bankruptcy or of the filing of any petition under bankruptcy Laws affecting the rights of Contractor which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, AOC shall have the immediate right to retain and take possession for safekeeping all Customer Data, AOC Confidential Information, AOC licensed Third Party Materials, AOC owned Materials, and all other Materials or Systems to which AOC is or would be entitled during the Term or upon the expiration or any termination of this Agreement. Contractor shall cooperate fully with AOC and assist AOC in identifying and taking possession of the items listed in the preceding sentence. AOC shall have the right to hold such Customer Data, Confidential Information, Materials, and Systems until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to AOC that they shall be protected from sale, release, inspection,

publication, or inclusion in any publicly accessible record, document, material or filing. Contractor and AOC agree that without this material provision, AOC would not have entered into this Agreement or provided any right to the possession or use of Customer Data, AOC Confidential Information or AOC Materials and Systems covered by this Agreement.

- (b) **AOC Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary and to the maximum extent permitted by applicable Laws, in the event that Contractor becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the “**Bankruptcy Code**”)) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a “**Bankruptcy Rejection**”), then (i) any and all of the licensee and sublicensee rights of AOC arising under or otherwise set forth in this Agreement shall be deemed fully retained by and vested in AOC as protected Intellectual Property Rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Contractor is the debtor, (ii) AOC shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code, and (iii) to the extent any rights of AOC which arise after the expiration or any termination of this Agreement are determined by a bankruptcy court not to be “intellectual property rights” for purposes of Section 365(n) of the Bankruptcy Code, all of such rights shall remain vested in and fully retained by AOC after any Bankruptcy Rejection as though this Agreement were terminated or expired. AOC shall under no circumstances be required to terminate this Agreement, in whole or in part, after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, unless and to the extent required by applicable Laws.

18.4 Termination for Adverse Change in Contractor’s Financial Condition.

If (i) Contractor receives a “going concern” explanation or qualification from its external auditor, (ii) Moody’s Investors Service lowers Contractor’s long term credit rating to Ba2 or lower, or (iii) Standard & Poor’s lowers Contractor’s long term credit rating to BB or lower and, in each case, in the reasonable opinion of AOC such change in the financial condition of Contractor may impair or otherwise compromise the ability of Contractor to perform its obligations under this Agreement, then AOC may, in its reasonable discretion, terminate this Agreement by giving Contractor at least thirty (30) days’ prior notice. With respect to the events described in (ii) or (iii) above, prior to exercising its right to terminate, AOC shall meet with Contractor within ten (10) Business Days following notification (or awareness) of such event and permit Contractor to submit to AOC a plan that comprehensively addresses AOC’s concerns related to Contractor’s ability to perform its obligations under this Agreement. If AOC, in its sole discretion, determines that the plan does not adequately address its concerns, AOC shall have the right to terminate this Agreement as described above.

18.5 Absolute Right.

If Contractor becomes (i) listed on the prohibited vendors list authorized by Executive Order Number 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control, or (ii) suspended or debarred from doing business with the State of Nevada or federal government, then AOC may, upon notice to Contractor, terminate this Agreement, in whole or, to the extent possible under applicable Law, in part, as of the termination date specified in the notice.

18.6 Non – Appropriation of Funds or Statutory Authority.

If funding for AOC's obligations under this Agreement is reduced by Law or funds sufficient to pay Contractor for the Services provided hereunder are not appropriated by applicable governing bodies or otherwise made available by Law, then AOC may, decrease the amount and types of the Services in such manner and for such periods of time as AOC may elect. In such event, (i) the Charges shall be adjusted downward in proportion to the portion of the Services that Contractor shall not be providing, and (ii) the Parties shall negotiate equitable adjustments to the Service Levels if and to the extent that any resulting reductions in scope or volume of Services directly affects Contractor's ability to meet the Service Levels, provided, that Contractor notifies AOC the extent to which it shall not be able to meet such Service Levels and uses commercially reasonable efforts to meet the Service Levels notwithstanding such reductions. AOC shall promptly notify Contractor if AOC believes that the necessary funding or authorizations shall not be obtained. If partial funding sufficient only for a portion of the Services shall be made available, the Parties may agree to perform their respective obligations relative to such Services, and this Agreement shall be amended accordingly. AOC is a State entity whose funding is subject to the actions of the State legislature. If funds sufficient to pay AOC's obligations under this Agreement are not appropriated by applicable governmental authorities, AOC may, upon notice to Contractor, terminate this Agreement, in whole or in part, as of the termination date specified in the notice without penalty or charges to AOC. If AOC and/or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (a) render the continued provision of the Services impossible or unnecessary, (b) render this Agreement invalid, illegal or otherwise unenforceable, (c) substantially decrease the amount and types of the Services or (d) terminate the appropriations for this Agreement, then AOC may, upon notice to Contractor, terminate this Agreement, in whole or in part, as of the termination date specified in the notice, without penalty to AOC. The AOC may terminate this Contract, or subject to this section, negotiate a reduction in Services and/or Charges, and Contractor waives any and all rights or claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the AOC's funding from State of Nevada and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

18.7 Termination of a Customer Contract.

If AOC elects to terminate a Customer Contract, then, upon the effective date of termination for such Customer Contract, those Charges attributable to the terminated Customer Contract shall cease.

19. GENERAL

19.1 No Waiver of Sovereign Immunity.

The Parties expressly agree that no provision of this Agreement shall be construed as or constitute a waiver by State, AOC, Customers, or the State of Nevada of any immunities from suit or from liability that State, AOC or the State of Nevada have by operation of law (whether constitutional or statutory, whether State or federal).

19.2 RFP Errors and/or Omissions.

Contractor shall not take advantage of or exploit any errors and/or omissions in the RFP or the resulting Agreement. Contractor must promptly (but not more than two (2) days from the time in which Contractor first becomes aware of any such situation) notify AOC of any such errors and/or omissions that are discovered and reasonably agree to modifications consistent with the intent of the Parties as of the Effective Date of this Agreement.

19.3 Abandonment or Default.

If Contractor abandons this Agreement, AOC reserves the right to cancel this Agreement without notice and either re-solicit and re-award this Agreement or take such further action or no action in the best interest of the State of Nevada or the Customer, and Contractor shall not be considered in the re-solicitation and may not be considered in future solicitations for the same type of Services, unless the Specifications or scope of work substantively changes.

19.4 Place of Performance.

Unless otherwise agreed to in writing, all Services performed by Contractor, its Subcontractors and agents must be performed in the United States and any Customer Data shall reside exclusively within the territorial boundaries of the United States. For avoidance of doubt, no Customer Data shall be stored in a data center or any other facility outside the territorial boundaries of the United States.

19.5 Binding Nature and Assignment.

- (a) **Binding Nature.** This Agreement shall be binding on the Parties and their respective successors, permitted assigns, transferees, and delegates. Except in the instance of an assignment or transfer by AOC of all or any portion of this Agreement pursuant to **Section 19.5(b)**, the assigning Party

shall remain liable for the performance of any assigned or transferred obligations hereunder.

- (b) **Assignment.** Contractor may not assign all or any portion of its rights under or interests in this Agreement (including by operation of law) or delegate, in whole or in part, any of its duties without the prior written consent of AOC, which consent will not be unreasonably conditioned, withheld or delayed; provided, however, in the event of a merger, acquisition, or purchase of substantially of Contractor's assets, Contractor may assign this Agreement to (i) an Affiliate or (ii) a business entity that is capable of complying with and performing all obligations under this Agreement (including, if applicable, the parent company of such business entity); provided that notice to AOC of such assignment shall occur promptly after such assignment. AOC may, without the approval of Contractor, assign or transfer its rights or obligations under this Agreement, in whole or in part, to any other State agency as directed by the State legislature or as otherwise required under Law. The consent of a Party to any assignment of this Agreement shall not constitute such Party's consent to further assignment. Each party to whom an assignment or transfer is made must assume all or any part of Contractor's or AOC's interests in this Agreement, the Services, and any documents executed with respect to this Agreement, including its obligation for all or any portion of the payments due hereunder.
- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void *ab initio*; provided, however, that if Contractor assigns this Agreement in contravention of this Section by operation of Law, such assignment shall be voidable at the option of AOC.

19.6 Entire Agreement; Amendment.

This Agreement, including any exhibits and attachments referred to herein or attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes the RFP and all prior agreements, representations, warranties, promises, covenants, commitments, or undertakings, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver or discharge is sought to be enforced. To the extent that a term of this Agreement creates a conflict between the terms of any exhibit attached hereto, the terms of this Agreement shall control over those terms in an exhibit.

19.7 Notices.

- a) All service of process and notices of a legal nature that may impact the rights, responsibilities, authority, or contractual position of the parties, including notices of default, breach, waiver, or termination, shall be in writing and delivered to the AOC or Contractor's Nevada Registered Agent (or other designated party) at the respective address below. Such notice shall be delivered by personal delivery – return receipt or written acknowledgment of receipt required, or by a nationally recognized overnight courier, or email (with confirmation of transmission) (to Contractor, email only with a duplicate written physical copy confirmed delivered), or by certified or registered mail, return receipt required. All delivery fees, costs, or postage *to be prepaid by sender. Except as may be otherwise provided in this agreement*, a notice sent in compliance with these requirements is effective upon receipt by the receiving party.

Katherine Stocks, Director
Administrative Office of the Courts
Nevada Supreme Court
201 S. Carson Street Ste 250
Carson City, NV 89701
Phone: 775.684.1701
Email: Kstocks@nvcourts.nv.gov

Contractor Contact Information
& NV Resident Agent Information

- b) Notice for all matters relating to and arising from this agreement not included in (a) shall be in writing and delivered in person, by U.S. mail, or by other method agreed upon by the parties, and shall be addressed or directed to the Project Manager(s) as follows:

AOC CONTRACTS & GRANTS
OFFICER
contracts@nvcourts.nv.gov

CONTRACTOR CONTRACT
INFORMATION

Any

change in the contact information for (a) or (b) must be provided to the other party in writing using section (b) delivery options within 30-days of the change.

- c) **Written Complaints.** In addition to other remedies contained in this Agreement, Contractor may direct its written complaints regarding AOC to the following office:

Administrative Office of the Courts
201 S Carson St., Suite 250
Carson City, NV 89701
Attention: Katherine Stocks, Director and State Court Administrator

With a copy to the following which does not constitute notice:

Administrative Office of the Courts
201 S Carson St., Suite 250
Carson City, NV 89701
Attention: Melody Luetkehans, Counsel

19.8 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

19.9 Headings.

The Article and Section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

19.10 Relationship of Parties.

Contractor, in furnishing Services hereunder, is acting as an independent contractor, and Contractor has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Contractor under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership or joint venture for any purpose. Contractor is not an agent of AOC and has no right, power or authority, expressly or impliedly, to represent or bind AOC as to any matters.

19.11 Severability.

If any provision of this Agreement (or any portion thereof) or the application of any such provision (or portion thereof) to any person, entity, or circumstance is held to be invalid, illegal or otherwise unenforceable in any respect by a final judgment by a court of competent jurisdiction, such provision shall be deemed to be void and unenforceable. Notwithstanding the preceding sentence, the remaining provisions of this Agreement, if capable of substantial performance, shall remain in full force and effect. By entering into this Agreement, AOC makes no representations or warranties regarding the enforceability of the terms of this Agreement and AOC does not waive any applicable Law that conflicts with the terms of this Agreement.

19.12 Consents and Approval.

Except where expressly provided as being in the sole discretion of a Party, where any agreement, approval, acceptance, consent, confirmation, determination, notice, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility

for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

19.13 Acceptance of Deliverables

The AOC has one (1) Business Week to report issues (bugs, defects, and/or changes) to Contractor for any given Deliverable. If the Deliverable is received at 12:00 P.M. Pacific Time or after, the Business Week commences the following Business Day. If issues are not reported by the end of the business week, the noted Deliverable is Accepted by default. Issues reported after the review period will require a Change Order.

Delivery of the item commences upon the item being placed in the appropriate repository and notice is sent by email to the AOC Project Manager.

The AOC will review and/or test the given Deliverable, document any changes or deficiencies, and respond to the Contractor Project Manager with the information. If no changes or deficiencies are reported to the AOC Project Manager, the AOC Project Manager will obtain the requisite approval signatures and notify Contractor of the Approval.

19.14 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** Except as expressly set forth herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at Law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at Law, in equity, by contract or otherwise.

19.15 Survival.

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein. Notwithstanding the expiration or any

termination of this Agreement, (i) the limitations on use and disclosure by either party with respect to Confidential Information of the other party shall survive the expiration or any termination of this Agreement and shall be perpetual so long as such party retains such Confidential Information, and (ii) other than the foregoing with respect to the survival of Confidential Information, each Party's confidentiality obligations under this Agreement shall continue for any period required by applicable Law or, in the absence of a required period, perpetually until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the Receiving Party or any agent, employee or Affiliate thereof.

19.16 Publicity.

Contractor nor Contractor Personnel shall publish in any format, hardcopy, electronic, for remuneration or gratis, including all social media sites, any media release or information relating to this Agreement, including identifying the Parties to this Agreement, without the prior written consent of AOC. Contractor shall provide AOC with a copy of any such pre-approved media release not less than five (5) Business Days prior to its intended public release. Notwithstanding the foregoing, Contractor may use AOC's name in any client lists.

19.17 Service Marks.

Contractor agrees that it shall not, without AOC's prior written consent, use any of the names, service marks or trademarks of AOC or any Customer in any of its advertising or marketing materials.

19.18 Export.

The Parties acknowledge that certain Materials and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the Laws of the United States, the European Union, the United Nations and other jurisdictions. Without limiting the Parties' obligations under **Section 13.10**, no Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such Laws and, to the extent within Contractor's control, Contractor shall be responsible for, and shall coordinate and oversee, compliance with such export Laws in respect of such items exported or imported hereunder.

19.19 Third Party Beneficiaries.

This Agreement is entered into solely between AOC and Contractor. The Parties hereby designate Customers as third-party beneficiaries of this Agreement. Other than Customers, this Agreement shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

19.20 Covenant Against Pledging.

Contractor agrees that, if it elects (in its discretion) to assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from AOC under this Agreement for any reason whatsoever, (i) Contractor shall continue to be AOC's sole point of contact with respect to this Agreement, including with respect to payment, and (ii) the person or entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action directly against AOC, and (iii) such assignment, transfer, pledge, hypothecation or encumbrance shall not be binding on AOC if such would result in a violation of any Law or any provision of Section 13.8.

19.21 Solicitation and Hiring of Employees.

Subject to applicable Laws, and except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Contractor shall not in a targeted manner recruit for employment in a position involved in the performance of Contractor's obligations under this Agreement, any known employees of AOC who worked substantially and directly with Contractor under this Agreement without the prior approval of AOC. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association. General solicitations or hiring as a result of contact without such known targeting shall be expressly permitted.

19.22 Further Assurances.

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

19.23 Liens.

Contractor shall not file, or by its action or inaction permit, any liens on or against property or realty of the State, AOC, or any Customer. If any such liens arise as a result of Contractor's action or inaction, Contractor shall remove such liens at its sole cost and expense within ten (10) Business Days. If Contractor fails to do so, AOC may, in its sole discretion, pay the amount of such lien, and/or deduct such amounts from payments due to the Contractor.

19.24 Covenant of Good Faith, Commercially Reasonable Efforts.

Each Party agrees that, in its performance of, and in its respective dealings with the other Party under or in connection with this Agreement, it shall at all times (i)

act in good faith, and (ii) use commercially reasonable efforts (except where a higher standard is set forth in this Agreement).

19.25 Acknowledgment.

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, with the assistance of legal counsel, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

[Signature Page to Follow]

Authority to Execute.

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

Nevada Administrative Office of the
Courts

Contractor

Katherine Stocks
Director and State Court Administrator

Contractor authorized rep & title

Date

Date

20. **EXHIBIT 1 - DEFINITIONS**

Master Services Agreement

Between

Nevada Administrative Office of the Courts (AOC)

and

Contractor

Term	Definition
Accept, Acceptance, or Accepted	Means AOC's written acceptance of any Deliverable, which may be given or withheld in accordance with the Agreement.
Affiliate	Means with respect to an entity, any other entity that directly or indirectly controls, is influenced by, or is under common control with that entity at the time in question. Affiliate also includes any member of the immediate family of any such employee.
AOC Confidential Information	Means Confidential Information of AOC and includes Customer Data, Work Product, attorney-client privileged materials, attorney work product, research information, information that contains trade secrets, human resources and personnel information, or other information or data obtained, observed, received, transmitted, processed, stored, archived or maintained by Contractor under this Agreement.
AOC Contract Manager	Means the individual to whom all Contractor communications concerning this Agreement may be addressed, designated by AOC.
AOC Indemnitees	Has the meaning given to it in <u>Section 15.1</u> of this Agreement.
AOC Standard(s)	Means (i) the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Contractor in the performance of the Services, including those identified in this Agreement, and (ii) the associated IT technologies architectures, standards, products, and systems to be provided, operated, managed, supported and/or used by Contractor in connection therewith.
Audit Period	Has the meaning given to it in <u>Section 8(b)</u> of this Agreement.
Bankruptcy Code, Bankruptcy Rejection	Has the meaning given to it in <u>Section 18.4(b)</u> of this Agreement.
Business Day	Means each day from Monday through Friday 7:00 a.m. through 6:00 p.m. (Pacific Time), excluding holidays recognized in the State of Nevada.
Change Request	Means a formal proposal for an alteration to the systems components or deliverables.
Charges	Means the fixed charges and fees for Contractor's provision of the Services.
CJIS	Means the security policies promulgated by the Criminal Justice Information Services Division of the Federal Bureau of

Term	Definition
	Investigation, and which are applicable to Contractor based on the Services provided under the Agreement.
Clerk's Office	Means the office of a clerk of any trial court located within the State of Nevada.
Commencement Date	Means 12:00 a.m., Pacific Time, on the day following the date of the first engagement between the Contractor and a Clerk's Office.
Confidential Information	Means (i) all information marked confidential, restricted or proprietary by either Party or Customer, (ii) any non-public, sealed or redacted Customer Data, (iii) any Highly-Sensitive Personal Information, and (iv) any other information that is treated as confidential by the disclosing Party or Customer and would or should reasonably be understood to be confidential, whether or not so marked. Contractor's Confidential Information shall not include Confidential Information of AOC or Customer; provided, however, that characterization of information as Confidential Information of Contractor shall not limit or restrict the rights of AOC or Customer to exercise its rights (including rights related to auditing and benchmarking) provided for under this Agreement.
Contract Records	Has the meaning given to it in <u>Section 8(b)</u> of this Agreement.
Contract Year	Means each AOC Fiscal Year during the Term. If any Contract Year is less than twelve (12) months, the rights and obligations under this Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.
Contractor Data	Means any data or information provided by or on behalf of Contractor, its Affiliates, its or their Subcontractors or agents, and any statistical or usage information regarding usage of the Services, and other similar anonymized and aggregated data.
Contractor Owned Materials	Has the meaning given to it in <u>Section 12.1</u> of this Agreement.
Contractor Personnel	Means those employees, representatives, contractors, Subcontractors, and agents of Contractor.
Contractor Sites	Means, individually and collectively, the facilities owned or leased by Contractor (or its Affiliates or Subcontractors) from which Contractor (or its Affiliates or Subcontractors) provides any Services.

Term	Definition
Corrective Action Plan	Means a written action plan prepared by Contractor that (i) clearly identifies the applicable problem or failure, (ii) describes the desired situation going forward, and (iii) sets forth the specific steps that shall be taken to solve the identified problem or correct the identified failure.
Customer	Means any trial court that adopts the MSA and its incorporated Exhibits.
Customer Contract	Means the agreement between a Customer and the Contractor for the provision of Services.
Customer Data	Means any data, metadata or information of or regarding any Customer that is provided to or obtained by Contractor in connection with the performance of Contractor's obligations under this Agreement. Customer Data includes any data and information with respect to the constituency of any Customer. Customer Data also includes (i) any data filed or used in connection with the Services, including any orders, drafts of orders, judgments, evidence, accounting, timelines, schedules, order of priority, records, resources, proceedings, appointments, and case documents, (ii) any and all other legal documents filed with, processed through, or used in or with the Services, (iii) any data that resides in or is accessed through Software or Systems provided, operated, supported, or used by Contractor in connection with the Services, as well as information derived from this data and information, or (iv) any metadata in connection with the provision of the Services.
Deliverable	Means any items described in the Statement of Work that constitutes a pay point and is developed for, on behalf of, or provided to AOC in the course of Contractor's performance of the Statement of Work or a Change Request.
Deposit Materials	Means the source code for all Software that is used to provide the Services, programmers' notes, and other documentation required to maintain and correct errors in the Software.
Disaster Recovery Plan	Means the Disaster Recovery & Business Continuity Plan, as attached to the Statement of Work in <u>Exhibit 4</u> to this Agreement.
Fiscal Quarter	AOC Fiscal Quarters end on September 30, December 31, March 31, and June 30.
Fiscal Year	AOC Fiscal Year commences on July 1 and ends on June 30.

Term	Definition
Force Majeure Event	Has the meaning given to it in <u>Section 16.2(a)</u> of this Agreement.
Government	United States government
Highly-Sensitive Personal Information	Means an individual's (i) government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); or (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account.
IIRIRA	Means the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
Initial Term	Has the meaning given to it in <u>Section 3.1(a)</u> of this Agreement.
Intellectual Property Right	Means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, privacy, proprietary, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
Kickback	a payment made to someone who has facilitated a transaction or appointment.
Losses	Means all costs, losses, liabilities, damages (including punitive and exemplary damages), fees (including attorneys' fees), fines, penalties, settlements, judgments, interest and claims (including taxes), in each case that a court may award to a Party or Third Party or which are otherwise included in the amount payable to a Party or Third Party and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, experts, settlement, judgment, interest and penalties), as incurred.
Major Release	Means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding Software release. These releases are usually identified by full integer changes in the numbering, such as from "7.0" to "8.0," but may be identified by the industry as a major release without the accompanying integer change.

Term	Definition
Malicious Code	Means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program, or sub-program, or to halt, disable, or interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.
Materials	Means all reports, management plan, issue management plan, project deployment plan, project schedule, configuration plan, stakeholder outreach, communication plan, any other plans, artifacts, formulae, algorithms, processes, process improvements, procedures, designs, concepts, methodologies, trade secrets, technology, equipment, Software (in both object and source code form), databases, Specifications and all records thereof, including documentation, design documents and analyses, interface documentation, studies, tools, plans, models, flow charts, reports and drawings.
Minor Release	Means a scheduled release containing small functionality updates and/or accumulated resolutions to defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include "Maintenance Releases" which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific Contractor Service Level or maintenance obligations, and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release.,
New Services	Means services requested by AOC, Customer or required by applicable Laws (without limiting the obligation of the Parties under <u>Section 4.3</u> of this Agreement) that are within the scope of the RFP and (i) that are different from the Services, (ii) that require materially different levels of effort or resources from Contractor to provide the Services, and (iii) which are not required for Contractor to meet the Service Levels. For the avoidance of doubt, New Services shall not include (a) increases in the volume of Services, (b) the disaggregation of an existing service from the Statement of Work, or (c) any Major Releases or Minor Releases.
Notice of Election	Has the meaning given to it in <u>Section 15.5(a)</u> of this Agreement.
Personal Data	Means that portion of Customer Data that (i) is subject to any Privacy Laws (including, but not limited to, information which AOC

Term	Definition
	discloses that consists of personal Confidential Information); (ii) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (iii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, answers to security questions, or other personal identifiers).
Quality Assurance	Means the actions, planned and performed, to provide confidence that all processes, Systems, Software, and components that influence the quality of the Services are working as expected.
Receiving Party	Means a Party receiving Confidential Information of the other Party.
Renewal Term	Has the meaning given to it in <u>Section 3.1(b)</u> of this Agreement.
Root Cause Analysis	Means the formal process to be used by Contractor and approved by AOC to diagnose the underlying cause of problems at the lowest reasonable level so that effective corrective action can be taken.
Secondary Fail-Over Facility	Has the meaning given to it in <u>Section 7.1(a)(iii)</u> of this Agreement.
Security Incident	Means (i) any act or omission that compromises either the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor, or by AOC in the event Contractor has access to AOC's Systems, that relate to the protection of the security, confidentiality or integrity of Customer Data, including any unauthorized access to or disclosure of Customer Data, or (ii) any actual or alleged breach of this Agreement relating to such privacy and data security practices.
Service Level Reimbursements	Means the monetary amounts that the Contractor shall be obligated to pay to AOC.
Service Levels	Means, individually and collectively, any of the following: the availability up-time requirements, quantitative and qualitative performance standards for the Services, the error severity levels and corresponding required service level requirements, responses, response times, resolution, and resolution times.

Term	Definition
Service Taxes	Means all sales, use, excise, and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by AOC from Contractor, excluding Income Taxes.
Services	Means all services, functions and responsibilities to be performed by Contractor under this Agreement and all incorporated Statement(s) of Work, including, but not limited to, all services in connection with operating, supporting, maintaining and transitioning Uniform Case Management System, including any Disaster Recovery Services, any New Services, and Termination Assistance Services.
Software	Means all Materials consisting of Software programs and programming (and all modifications, replacements, upgrades, enhancements, documentation, materials and media related thereto), including antivirus software, application software, development tools, and system software.
Specifications	Means the technical, design and/or functional specifications in AOC's description of any Services in the Statement of Work, or otherwise agreed upon in writing by the Parties.
State	Means the Supreme Court of the State of Nevada, unless expressly stated otherwise.
Subcontractors	Means subcontractors (of any tier) of Contractor, including Affiliates of Contractor, performing, supporting, or maintaining the Services under this Agreement pursuant to <u>Section 7.3</u> of this Agreement.
System	Means an interconnected grouping of manual or electronic processes, including Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, upgrades or enhancements to such System and all Systems installed for AOC or any Customer during the Term.
Technology Evolution	Means any improvement, upgrade, addition, modification, replacement, or enhancement to the standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, equipment, Software, systems, tools, products, transport systems, interfaces, and personnel skills available to provide the Services in line with the industry practices of comparable leading providers of services that are the same as or similar to the Services. Technology Evolution

Term	Definition
	includes, as relating to such items for such purpose: higher capacity, further scaling and commercializing of processes, more efficient and scalable processes, new versions and types of applications and systems/network Software, new operational or IT Infrastructure processes, and new types of hardware and communications equipment that shall enable Contractor to perform the Services more efficiently and effectively as well as enable AOC to meet and support its operational requirements and strategies.
Term	Has the meaning given to it in <u>Section 3.1(b)</u> of this Agreement.
Termination Assistance Services	Has the meaning given to it in <u>Section 4.2</u> of this Agreement.
Third Party	Means a legal entity, company, or person(s) that is not a Party to this Agreement and is not an Affiliate of a Party.
Third Party Materials	Means Materials that are owned by Third Parties, including any Subcontractors that are Third Parties, and provided under license or lease to Contractor and that (i) have been or will be used to provide or receive the Services, or (ii) constitute programs or programming licensed and/or leased to Contractor during the Term.
Trial Court	Means any district, justice or municipal court within the State of Nevada.
Warranty Period	Means the period commencing on the Effective Date and continuing until the date that is one hundred twenty (120) days after the end of the Term.
Work Product	Means (i) all reports and plans, including business requirements documents, design documents, manuals, training and knowledge transfer materials and documentation, and (ii) any literary works and other works of authorship created under this Agreement that express, embody or execute or perform a function, method or process that is specific to the business of AOC or Customer. Work Product includes customized reports, manuals and forms, but not the original unmodified versions used by Contractor as a starting point for creating the customized version.